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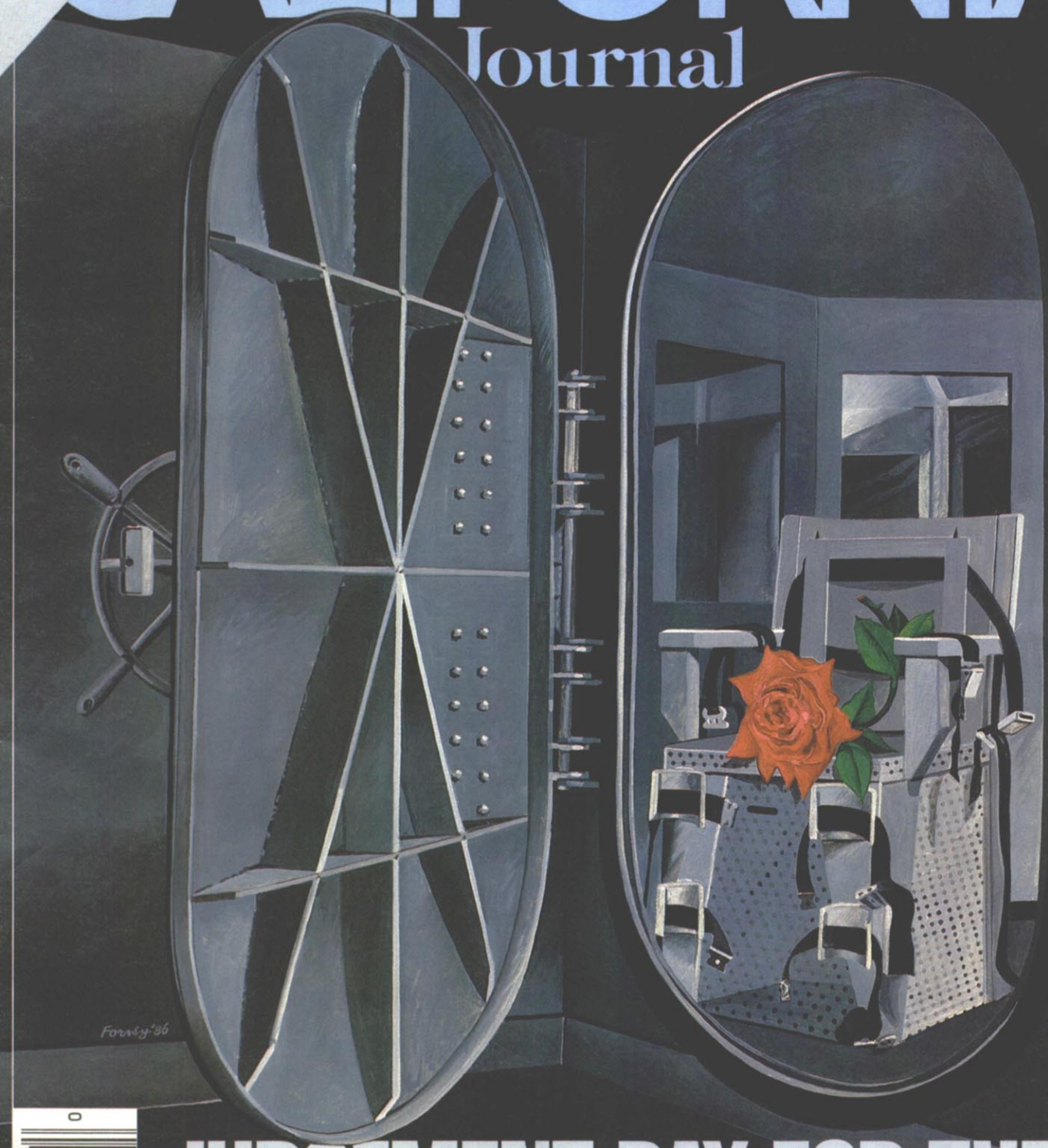

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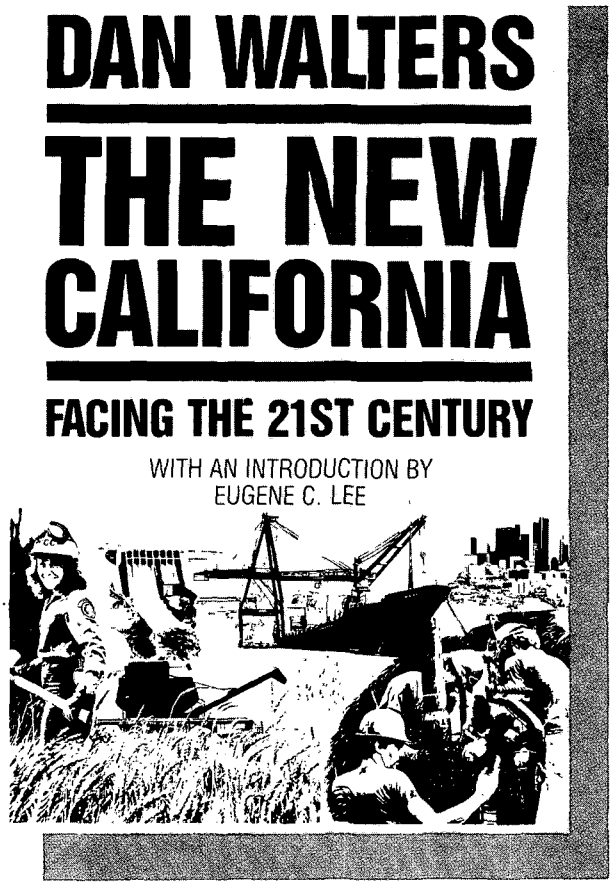
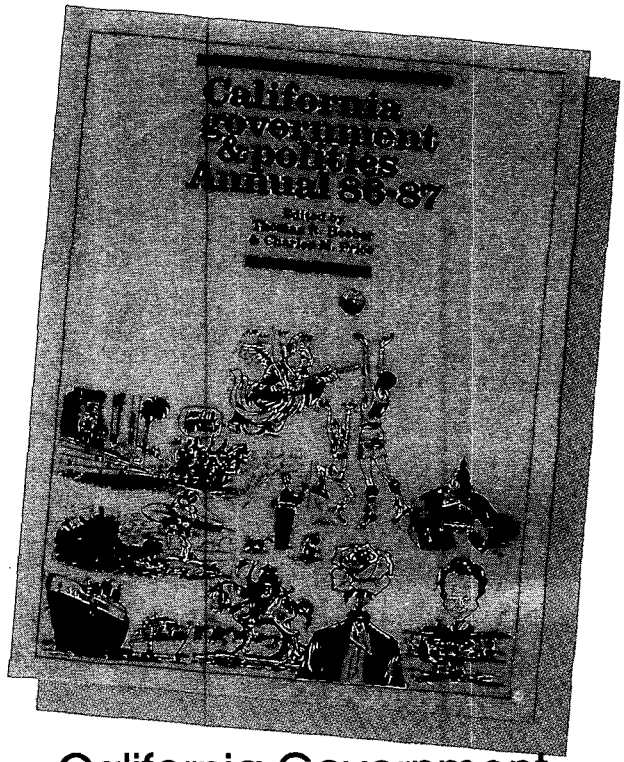


The New California — Facing the 21st Century

by Dan Walters

with an introduction by Eugene C. Lee

The *Sacramento Bee's* well-known political correspondent, Dan Walters, recently completed a 9000-mile odyssey through California's 58 counties which resulted in a 15-part series in the *Bee*. The articles describe the socioeconomic future of the nation's largest state and the political implications of these trends. This lively and insightful series will be available in book form June 15th. The 180-page book contains numerous charts with detailed political and demographic data. Price: $8.95.



California Government and Politics Annual

Thomas R. Hoeber and Charles M. Price

The brand-new-17th edition of *California Journal's* **California Government and Politics Annual** is now available. The **Annual** has become a standard resource book for college and university courses in state and local government. But it is also a valuable tool for individuals seeking an overview of the California system of Government and current political issues.

The 1986-87 edition contains the popular "Quick Guide to State Government and Politics" and chapters on the various branches of government, lobbying; parties, politics and elections; citizen democracy; and local government. The 128-page large-format book is edited by Thomas R. Hoeber of the *California Journal* and Charles M. Price, political science professor at Chico State University and author of several books on state and local government. The price: $5.95.

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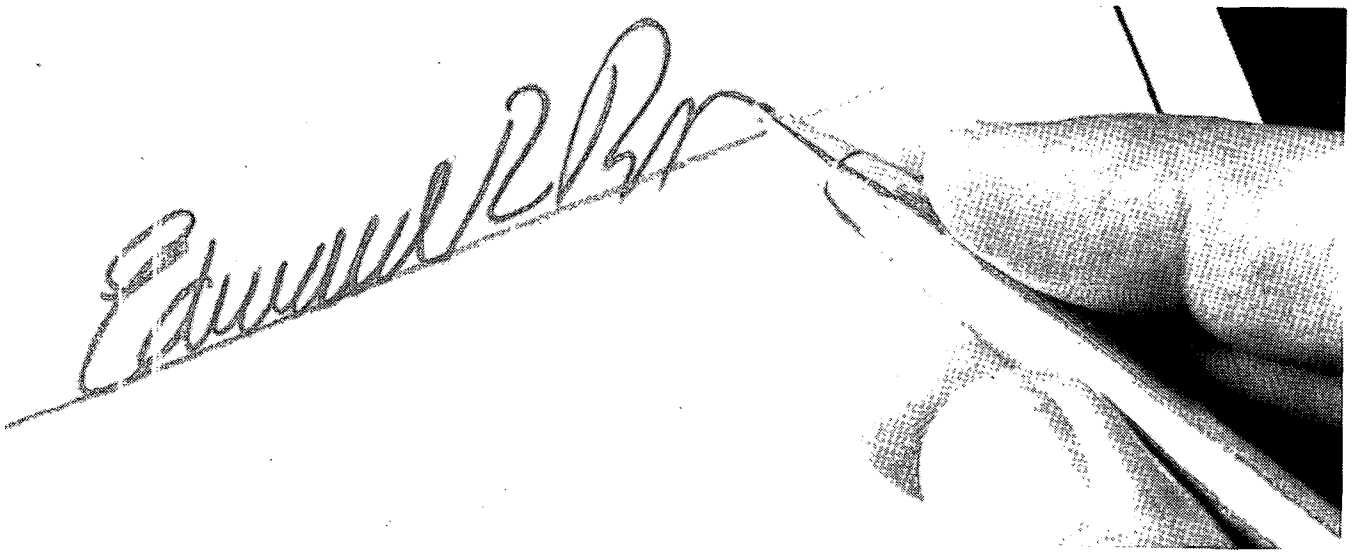

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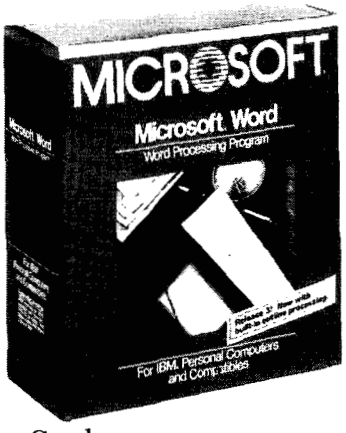
WORD IS GETTING AROUND.



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A little later, Version 1.1 was introduced, which added built-in merge, more printers, and support for the Hercules™ Graphics Card. When Version 2.0 debuted, Word's versatility increased even more with the addition of windows, an 80,000-word spelling checker, and support for a mouse.

Now Microsoft is introducing a Word that's even better—version 3.0. It brings more versatility to the program, while still retaining all the features that have made Microsoft Word one of the most popular programs on the market.

Here's a sample of what makes Word 3.0 better than any version yet:

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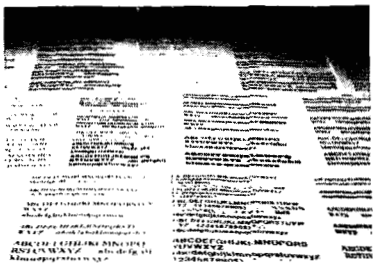
...And subtracts, multiplies, divides, and figures percentages, too—while you're still in your document. And with Word's ability to select, delete, copy, and move columns of numbers and text, it's easy to organize and calculate different pieces of the information at one time.

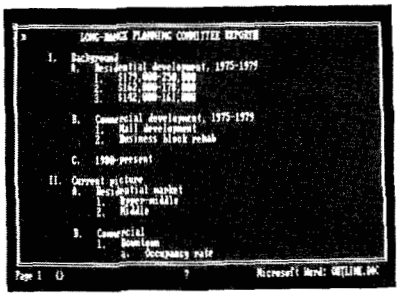


The latest Word in print.

Word 3.0 also supports more of the new laser printers than any other word processing package, including Hewlett-Packard's very popular LaserJet. Word accommodates up to 64 fonts, down-loadable for quick and easy changes. You can also mix them in your text and still get justification and proportional spacing.

Outlining—Word now has it.

With its remarkable new outlining capability, Word 3.0 makes it easy to organize ideas and text—and to reorganize them. The outliner also allows you to generate and automatically number a table of contents and to produce indexes from the outline you've just done. You can also move and sort columns.



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```
**********************************************
* LEGI-TECH          6/18/86        ACTION REPORT *
**********************************************
SB 1970  ELECTRICITY: DEMAND AND SUPPLY FORECAST: REPORT
ROSENTHAL
ACTIONS:  02/18/86 INTRODUCED IN SENATE
          02/24/86 REFERRED TO SENATE COMMITTEE ON ENERGY &
                   PUBLIC UTILITIES
       => 04/08/86 PASSED BY SENATE COMMITTEE ON ENERGY &
                   PUBLIC UTILITIES
          04/08/86 REFERRED TO SENATE COMMITTEE ON APPROPRIATIONS
          04/21/86 AMENDED
          05/12/86 FROM COMMITTEE ON APPROPRIATIONS
          05/22/86 PASSED BY SENATE
          05/22/86 INTRODUCED IN ASSEMBLY
          06/02/86 REFERRED TO ASSEMBLY COMMITTEE ON
                   UTILITIES & COMMERCE
       => 06/18/86 PASSED BY ASSEMBLY COMMITTEE ON
                   UTILITIES & COMMERCE
          06/18/86 REFERRED TO ASSEMBLY COMMITTEE ON WAYS & MEANS
```

SENATE DAILY HISTORY

S.B. No. 1970—Rosenthal.
An act relating to electricity.
1986
Feb. 18—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Feb. 20—From print. May be acted upon on or after March 22.
Feb. 24—To Com. on E. & P.U.
Mar. 17—Set for hearing April 8.
=> April 17—From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 5. Noes 0. Page 5053.)
April 21—Read second time. Amended. Re-referred to Com. on APPR
April 30—Set for hearing May 12.
May 12—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
May 13—Read second time. To third reading.
May 19—To Special Consent Calendar.
May 22—Read third time. Passed. (Ayes 30. Noes 0. Page 5887.) To Assembly.
May 23—In Assembly. Read first time. Held at Desk.
June 2—To Com. on U. & C.
=> June 23—From committee: Do pass, but first be re-referred to Com. on W. & M. (Ayes 11. Noes 0.) Re-referred to Com. on W. & M.

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CALIFORNIA Journal

VOLUME XVII, NUMBER 9 SEPTEMBER 1986

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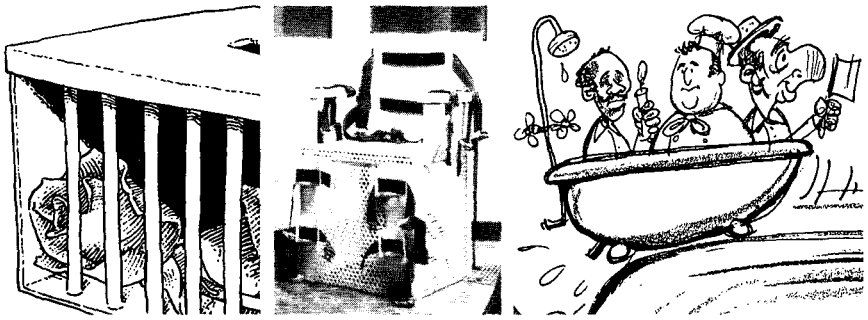

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UP FRONT

Is it true Abe Lincoln started this way? Perhaps the most interesting topic raised by the candidates for governor or lt. (that's short for "light") governor is the moral imperative of debating during a political campaign. First, let's get the record straight. Everybody says they want to debate; it's the other guy that's creating problems. The trouble is, it seems almost no one wants to debate the opponent he has (with the exception of Tom Bradley, who will settle for being in the same column of a public-opinion poll as George Deukmejian). Deukmejian says he doesn't want to appear with Bradley because they'd bore the public (now, if he *really* wanted to keep us from being bored . . .) and because Bradley has been just too mean to appear on the same stage with him. Things are a little different for the would-be seconds-in-command. Although no one thinks his debate with McCarthy would be boring, Mike Curb has adopted the rest of his leader's argument. Bizarre as it may seem, Curb is upset because Leo McCarthy is making *personal* attacks. Imagine anyone questioning the personality of Mike Curb, the man who self-destructs at press conferences (and so has stopped holding them), and only a year ago said the job he once held and now wants again was "a lot of wasted time." Curb campaign director Bill Roberts (a man famous for his quote that it's okay to lie during a campaign and it's up to the other guy to catch you) dashed off a letter to McCarthy accusing him of repeating — you guessed it — "dirty lies." Roberts went on to say McCarthy's "actions have precluded any debates . . . as long as you continue to campaign this way . . . ." Well, last month both Duke and Mike took something of a dip in the public-opinion polls. That has a way of making the sleeziest opponent look like a more acceptable debating partner.

Ten-gallon Floyd "Bud" Marsh, Colusa County supervisor, rancher, businessman, Democrat and friend of former Governor Pat Brown, wanted us to know that he's the genuine, independent article for the sprawling Third District Assembly seat. In fact, says Bud, he's not even going to take any money from that perverter of independents — Assembly Speaker Willie Brown. He'll run a a real grass-roots campaign. Well, we admired Bud's courage for awhile (he's going to need a bucket of money to win a district that's only 46 percent Democratic) until we ran into Richie Ross, the head of Willie's bucket brigade. Seems the speaker boosted Bud's courage a bit by deciding he wasn't going to get any money anyway. If Speaker Brown's not coming to Bud's aid, Richie promises his boss will have a few surprises for unsuspecting Republicans elsewhere in the state, but the whole operation is supersecret. "Even our own candidates won't know we're in until we've hit," said Ross with a cackle.

The official, somewhat irrelevant structure that is the California Democratic Party, scouring around for some reason to justify its existence, has launched a program to attract youngish voters to its cause. College-age and recent college graduates once were natural grist for the Democratic mill, but more often than not these days, the so-called Yuppies are registering Republican. So, the Democratic Party — not to be confused with powerful Democrats like Willie Brown and David Roberti from the Legislature or state Treasurer Jesse Unruh — has set up a series of four luncheons in San Francisco, each featuring a speaker who will lecture on the link between politics and his or her profession (sports, education, business and the media). Cost for the series: $100.

On September 1st, the governor of California will have left a major cabinet post vacant for 303 days (former Secretary of Health and Welfare David Swoap resigned on November 1, 1985).

The newest rage in political collectibles. Norma Jean Almodovar, Libertarian candidate for lieutenant governor, has started a poster-of-the-month club, with each new pin-up revealing more of Norma Jean than you'd ever want to see. In July she posed in boxing togs for a "Victory" poster. In August her all-together was held together with a modest amount of ribbon for a "Cut the Red Tape" poster. And the election is still two posters away.

Actually, we expected a raft of these. Last month we told the story of Sacramento Superior Court Judge Ron Robie who we speculated may be the only person appointed to jobs by three successive California governors. Robie was put on the Water Resources Control Board by Ronald Reagan, made director of Water Resources and appointed to the municipal court by Jerry Brown and made a superior court judge by George Deukmejian (after winning an election in June, anyway). Well, now we've learned of another, long-time state employee with similar credentials — Jerry Prod. Prod was Reagan's chief deputy director for social welfare, Brown's chairman of the Solid Waste Management Board and Deukmejian's first director of the Department of Social Services. All three of those jobs required confirmation by the state Senate. He's now a deputy director for Corrections.

Check the fine print. The folks at Senator Alan Cranston's campaign office knew their challenger was trying to tell them something, but they didn't know what. In the mail came a nice letterhead envelope from the campaign office of GOP rival Ed Zschau (as in "now"). But the envelope was empty. So they called Zschau's office to ask what it was supposed to contain. Turned out it was Zschau's self-penned, nine-point program for an ethical campaign which he wants Cranston to sign. One of the major points is that the candidates will tell each other 24 hours in advance when they intend to attack each other's records in campaign mailings. Exceptions presumably made for empty envelopes.

(Dana Bottorff, Washington)

At least she's honest. When asked to explain one of her bills before the Assembly Ways and Means Committee recently, freshman state Senator Becky Morgan conceded, "This bill has gone through the whole process on 'consent,' and I don't know anything about it." Committee Chairman John Vasconcellos criticized Morgan's bill but commended the Los Altos Republican for her honesty. The Legislature's "consent calendar" is a handy way for lawmakers to zip their bills through the process without a hearing, provided there is no opposition to the bill. And of course, if no one knows a bill is around, no opposition can develop. Very handy.

Bye, bye, barracuda. Saratoga's Republican Assemblyman Ernest Konnyu is leaving the Legislature for Congress next

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year (unless something startling happens in a district with only 44 percent Democratic registration) after a short career most notable for his institution of the "Barracuda Awards," given each year to the lobbyist, legislator and member of the governor's staff hardest to say "no" to. As a parting shot, Konnyu decided to give out awards to the top barracudas of the "semidecade," which just happens to correspond with his tenure in Sacramento. Winning the plaudits, Deukmejian Chief of Staff Steve Merksamer, for his all-around warm personality; Assemblywoman Maxine Waters, for an evil eye capable of melting the most recalcitrant opponent; and lobbyist Joe Gonsalves, lauded as a "barracuda with velvet, smiling teeth."

Now comes San Jose with proof that one person's art is another person's junk. A 20-foot metal sculpture bought by San Jose to gussie up its downtown area is missing — and presumed junked. The piece — "Great Planes Study No. 7" by Oakland artist David Bottini — cost $8000 when purchased by the city about 10 years ago. It had been on display near the San Jose Museum of Art but vanished about the same time construction began on a nearby hotel last April. City officials apparently were warned the sculpture was at risk from the construction but failed to remove it. Thus, the Bottini work was thrown out by the contractor. Thrown out? Mistake a 1500-pound, red-white-and- blue sculpture for trash? Sounds more like the work of an art critic with a backhoe.

Warren Harris thought he had a good idea. Harris, a state employee from the Sacramento area, suggested the state printing plant work up a little five-by-eight-inch note pad called "Things to do Today" and distribute it to state employees to help them better organize their time. So, he sent his suggestion in to the Department of Personnel Administration's Merit Award Board which evaluates such missives and honors employees who save the state money. Came the reply: Sorry, Warren, too expensive. According to the Department of General Services, which oversees the Sacramento print plant, the note pads would cost $7.50 each for a 50-sheet pad — or $94,301,250 per year. PIP Printing in downtown Sacramento would have done the same job for $1.42 per pad — less than one-fifth the cost.

Kam Kuwata, campaign press secretary for Senator Alan Cranston, tried to visit opponent Ed Zschau's July 7th press conference in Los Angeles — the one where Zschau told the city's Jewish community

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Editor's note: Thomas Lynch, who served as attorney general of California from 1964 to 1971, passed away in San Francisco on May 29, 1986, at the age of 82 and after a lengthy illness. His former press secretary and special assistant, Tom McDonald, wrote this memorial to Lynch at the request of the current attorney general, John Van de Kamp. It was published in a Department of Justice newsletter, and Van de Kamp sent it on to us because he thought it deserved a wider audience. We agree.

Tom Lynch

Thomas Connor Lynch was a splendid man. He was also a great attorney general. Tom, moreover, was a challenging man. He moved through life with Irish aplomb — a trail of cigarette ashes, jailed crooks, loyal friends and a loving family. He ignored physical adversity and emphasized personal and professional dignity. And, most of all, honesty. I think that blue, pin-stripe suits were invented for his long, lean frame. He challenged everyone to meet his standards.

"So you think you know all about the attorney general's office," Tom said at our first meeting in the panelled office of the attorney general in San Francisco. He then walked over to the wall and rapped on one of the panels. It opened to reveal a bottle of bourbon and a deck of cards. "Been there since Pat (Brown) was A.G. You didn't know about it. Stanley (Mosk) didn't know about it. I did."

Tom also had advice for every occasion. He told me that if I was ever invited to join the cops in hauling a body out of San Francisco Bay to "wear old clothes, a Hawaiian shirt is nice, and smoke a cheap cigar, so you don't smell the stiff."

A quotable man, Tom was fond of making the right decision in a key situation and then announcing, "I didn't go to school just to eat my lunch."

Tom also had a lovely disdain for Los Angeles. It took me a year to convince him that Angelenos were really standing in line to buy hamburgers at Tommy's Original Hamburger Stand at Rampart and Beverly. Tom was convinced that Angelenos would only line up at a shack like Tommy's to buy drugs.

Thomas Connor Lynch: fiercely proud of his sons . . . lovingly proud of his wife . . . surveying his one and only San Francisco from his Twin Peaks aerie . . . worried about his friend Pat Brown's campaign for a third term . . . stunned and saddened at the death of his friend Senator Gene McAteer . . . advising new Governor Ronald Reagan on how to handle a news conference . . . prosecuting most of the tax assessors in the state . . . cooly handling relations between the state government and Los Angeles Police Chief Bill Parker during the Watts riots and insisting that his role never be publicized . . . driving through the rain-slick night-time streets of Washington D.C. with Labor Commissioner Jack Henning to see a statue of Robert Emmett. Tom Lynch was a piece of work.

He could also wither fools with a glance.

He was a speech writer's delight. He had a voice that made the dullest prose sing.

I remember a speech he particularly liked. He delivered it at the end of his campaign in 1966: "I have not toured a single shopping center. I have shunned all campaign junkets. I have not participated in a single 'old-fashioned political rally.' And although I have traveled throughout the state, I have carefully avoided the hustings — whatever they are. While John F. Kennedy brought a new grace and style to politics, I have discovered this year that his eloquence has already been translated into a new handbook of political clichés for some of the most tattered political windsocks."

It was an interesting time in the attorney general's office. But I must admit that occasionally working with Tom Lynch and Charlie O'Brien, I felt I was the younger brother in (Eugene O'Neill's) "*Long Day's Journey Into Night.*"

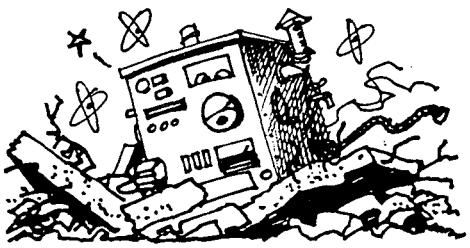
When Tom visited my home in Los Angeles, he insisted on a ritual departure, a Clancy Brothers song full blast on the stereo:

"Fill to me the parting glass,
Since I must rise and you may not.
Oh, all the comrades that e'er I had
Are sorry for my going away
And, the only sweetheart that e'er I had
Would wish me one more day to stay.
But, since it falls unto my lot
That I should rise and you should not,
I'll gently rise and softly call,
Good night and joy be with you all."

that a whirlwind trip to Israel had given him a heightened sensitivity to that country's problems. Kuwata wasn't incognito; he readily introduced himself to Zschau staffers. But the Republican candidate's folks wanted no part of Kuwata who was told to scoot by Ron Smith, a Zschau consultant. "It wouldn't be kosher," Smith reportedly told Kuwata. Magnanimous to a fault, Kuwata sent Smith a complimentary press pass good for all future Cranston events.

(John Raess, San Jose)

Say, what? *The Lattice* is a newsletter put out by SSC Central Design Group, the folks from Lawrence Berkeley Labs who are designing the giant, atom-smashing Superconducting Super Collider so coveted by several California communities. The May/June newsletter carried this item: "The SSC Heat Leak Model repairs were completed at the end of April. The damage was



sustained . . . by an estimated 50 g impact of the model with the concrete slab at the ER test site while unloading the finished model. The damage was limited to the support posts." In other words, they dropped it.

(Vic Pollard, Sacramento)

Come across a blurb lately that's nosy, newsy or smart-alecky about California government, politics or politicians? Share it with the Journal. *We pay up to $25 for entertaining tidbits published in "Up Front," so rush your items to Up Front, 1714 Capitol Avenue, Sacramento, 95814. Sorry, submissions cannot be returned.*

"If the power of making (judicial appointments) was committed . . . to the people . . . there would be too great a disposition to consult popularity to justify reliance that nothing would be consulted by the Constitution and the laws."

Alexander Hamilton

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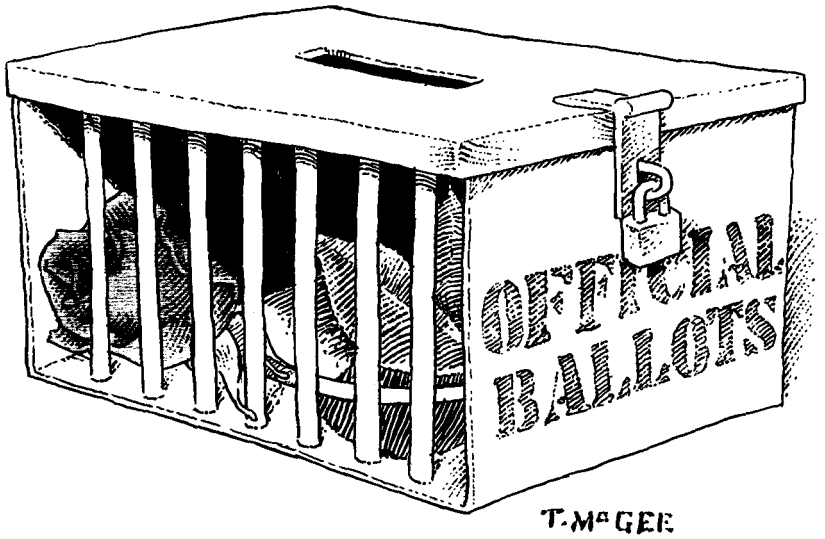

JUDGEMENT DAY FOR THE SUPREME COURT

Rose Bird faces the ultimate jury

By RICHARD ZEIGER

Barring a remarkable political turnaround, the state's voters this November will — for the first time — refuse a new term to an unopposed appellate court justice. In the view of some, that's an event which will permanently alter the state's judiciary, upsetting the delicate balance between the branches of government and leaving every judge to ponder if his or her next decision will unleash the voter's wrath.

The debate over whether voters should take this step is being pursued with complex philosophical arguments and with the most basic of emotions. At the center of the debate stands the enigmatic figure of the current chief justice — Rose Elizabeth Bird. For when all the rhetoric is stripped away, the outcome will be determined by how voters feel about the 49-year-old Bird — and how much blame they give her for the state's failure to implement the death penalty (see story, page 443).

Bird has been controversial since March 14, 1977, when she was chosen for the high Court by then-Governor Jerry Brown as much for her symbolic value as for her judicial qualities. Bird was young, a liberal with strong environmental connections who came from outside the judicial establishment, and a woman. While those qualities gave her groups of supporters, it also made her a convenient target for those who didn't care for the symbols. Opponents derided her appointment from the first and loudly complained when they did not like her decisions.

If the feelings against Bird run strong enough, it is possible she could bring down two other justices being targeted for defeat — Joseph Grodin and Cruz Reynoso. And if the public is undiscerning — and public-opinion polls to this point show they are — three other justices might also be in for rude surprises.

Bird is a complex person, and the often contradictory nature of her statements and actions have — at least until this election year — gone unexplained, making her an easy target for critics. An outsider when appointed to the bench by Brown, she took steps to break down the "fraternity" nature of the state's judicial system, then seemed dismayed when the legal community failed to close ranks around her when she was challenged. She has shunned publicity, yet has done much to open the courts to public review. She is admired as a woman of principle by both supporters and detractors, yet her insistent adherence to principle is cited as one of the major reasons she should be defeated. She says she is a tolerant person who would "be the last one to dictate to anybody," and yet those who have worked with her have an old saying: "There's Rose's way to do something, and the wrong way."

The system

Supreme Court justices stand for reconfirmation under a provision of the state Constitution adopted by voters in 1934. It was a compromise proposal — widely supported by the legal and business communities — designed to eliminate the earlier practice of holding contested elections for all judicial positions, including for the Supreme Court. Some proponents of the measure really preferred eliminating elections for the appellate courts and adopting a life-tenure system utilized by the federal government. That idea was abandoned as impractical, however. It was envisioned that, without an opponent, voters would have little reason for turning out a justice. And that is just how it's worked for more than 50 years.

But now there is a concerted drive to defeat Bird, Reynoso and Grodin, raising a debate, mostly in the legal community, about just what was intended by this peculiar constitutional provision. Some, mostly supporters of the justices, have argued that the standard for judging jurists should be higher than for other officeholders. Others, mostly those who want the justices out, argue that voters are entitled to use any standard they wish.

Bird's campaign spokesman, Steve Glazer, says voters should evaluate a justice's "competence, integrity and hard work." What should specifically be avoided is looking only at

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the outcome of cases: Did the Court let the criminal go? "That's inappropriate," says Glazer. If one does want to look at opinions of the Court, they should be evaluated for "good legal reasoning and if (they're) based on the law and Constitution." That type of evaluation, of course, is beyond the inclinations of most voters. No matter; Glazer has a list of 285 "distinguished law professors" who have said they support Bird. Their judgement can be trusted on this subject, he says. Who should not be trusted is politicians. "They have their own branch of government. It's not their aim to ensure an independent Court as a check on their branch of government."

Those urging the defeat of the three justices don't worry much about intellectual niceties like the "right standard" voters should apply. "Virtually any standard that one adopts for this election should result in a vote against Bird, Grodin and Reynoso," argues Ed Jagels, Kern County district attorney and a steering committee member of anti-Bird Crime Victims for Court Reform. "Is it valid to take into account the record of the Court? The answer is a resounding, 'yes.'" (See story, page 435.)

Available evidence suggests that voters are siding with Jagels. An August *California Poll* found that a majority of the voters thought Bird was qualified to be a Supreme Court justice and rule on matters based on the Constitution. But more than 60 percent also thought she had gone too far to protect criminal defendants and had allowed her personal feelings to affect rulings on the death penalty.

That same poll also found 57 percent of voters prepared to vote against Bird, with only 10 percent still undecided. The great mystery is how the Bird forces, who have more than $1 million in the bank, intend to turn things around.

Defeat into victory

The Bird forces offer no assistance on this subject, fearing their opponents might be able to counter any strategy that is made public. Her committee's early activities have been to try to correct the record when it believes the chief justice's opponents have made mistakes, and it has increased Bird's contacts with the press and public (see story, page 451).

Her supporters remain, at least publicly, undaunted by the poll results, which Glazer maintains are only a reflection of

A glance at t

Bird

Mosk

Broussard

ROSE ELIZABETH BIRD

Chief Justice
Age: 49
Native of Tucson, Arizona.
Education: Long Island University (BA); UC Berkeley (JD).
Appointment: by Governor Jerry Brown on March 14, 1977, to fill the unexpired term of Chief Justice Donald Wright.
Prior to appointment: state secretary of Agriculture and Services, 1975-77.
Confirmed: November 1978 (52-48 percent).
Next confirmation: November 1986 for a 12-year term.
Comments: The first woman appointed to the Court and clearly its most liberal member. In her early years, shared that distinction with the late Mathew Tobriner and the now-retired Frank Newman.

STANLEY MOSK

Associate Justice
Age: 74
Native of San Antonio, Texas.
Education: University of Chicago (PhD, LLB).
Appointment: by Governor Pat Brown on August 31, 1964, to fill the unexpired term of Associate Justice Roger J. Traynor.
Prior to appointment: state attorney general, 1959-64.
Confirmed: November 1974 (74-26 percent).
Next confirmation: November 1986 for a 12-year term.
Comments: One of the best-known liberal state judges in the field of criminal and constitutional law and tort liability, but also the author of scathing dissents from liberal rulings in racial-preference and landlord-tenant cases. Voted to uphold 10 death sentences last December.

ALLEN BROUSSARD

Associate Justice
Age: 57
Native of Lake Charles, Louisiana.
Education: UC Berkeley (AB, JD)
Appointment: by Governor Jerry Brown on July 10, 1981, to fill the unexpired term of Associate Justice William P. Clark.
Prior to appointment: judge, Alameda County Superior Court, 1975-81.
Confirmed: November 1982 (56-44 percent).
Next confirmation: November 1994 for a 12-year term.
Comments: Has written more major rulings than any other justice over the past several years on subjects ranging from labor to the death penalty to water law and initiatives. The only Black justice, he is regarded as a liberal but voted with the majority on search and malpractice decisions. Broussard is the only sitting justice not up for confirmation in 1986.

CRUZ REYNOSO

Associate Justice
Age: 55
Native of Brea, California.
Education: Pomona College (AB), UC Berkeley (JD).
Appointment: by Governor Jerry Brown on January

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the "$4 million in unanswered propaganda" put out by Bird's opponents. As our campaign moves into high gear, we will make substantial progress in the polls."

Bravado not withstanding, the Bird campaign goes into the fight with one hand tied behind its back. Judicial ethics prohibit the use of some campaign methods, and Bird's own convictions have ruled others off-limits. In addition, the strong-minded chief justice has had a hard time finding compatible professional help. Last year she hired media consultants and retained pollster Pat Caddell, but no one stayed. She now has on staff only Glazer and a researcher, and Glazer refuses to say to whom, if anyone, Bird goes to for advice on how to campaign.

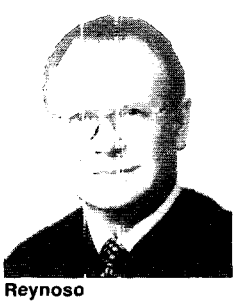
She rejected the efforts of many who wanted to join forces with her, turning down the efforts of her Court colleagues to run a joint campaign and refusing to join with those who wanted to set up an independent committee to back all justices, although Glazer says "we have a very cooperative relationship with them."

Although the other targeted justices initially preferred a united campaign, they now see advantages in the separate efforts. "If she's going down, maybe we can arrange so that we don't go down with her," said the manager for another justice.

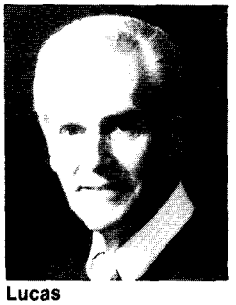
Reynoso and Grodin both have begun full-fledged campaign efforts, including establishing committees and hiring professional campaign management. Handlers for the two justices say they will attempt to portray their candidates as judicial in temperment and to make it clear they are not clones of the chief justice, if that approach becomes necessary (see story, page 439). Neither will have a great deal of money to spend, perhaps $500,000 to $1 million each. But it will be enough to provide a small amount of television advertising. In the meantime both have made a substantial number of personal appearances, and Grodin, in particular, has been aggressive in making contact with the media.

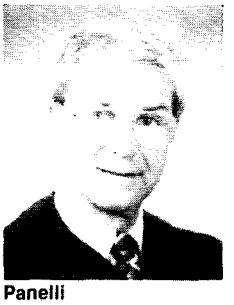
The other justices up for reelection — Stanley Mosk, Malcolm Lucas and Edward Panelli — plan to do no campaigning. Lucas and Panelli will depend on the fact no organized group has targeted them and that they are Deukmejian appointees and thus can claim to be "law and order candidates." In the meantime they plan to keep as low a profile as possible. Lucas

upreme Court


Reynoso

Grodin


Lucas


Panelli

22, 1982, to fill the unexpired term of Associate Justice Mathew Tobriner.

Prior to appointment: associate justice, state Court of Appeal, Sacramento, 1976-82.

Confirmed: November 1982 (53-47 percent).

Next confirmation: November 1986 for a 12-year term.

Comments: A former director of the California Rural Legal Assistance program, he is the first Hispanic to serve on the Court. A strong liberal on social issues but more moderate on economic issues. Cast a crucial vote to uphold Proposition 8 of 1982 — the Victims Bill of Rights initiative.

JOSEPH GRODIN

Associate Justice
Age: 56
Native of Oakland, California.

Education: UC Berkeley (BA); Yale (JD); London School of Economics (PhD).

Appointment: by Governor Jerry Brown on December 27, 1982, to fill the unexpired term of Associate Justice Frank Newman.

Prior to appointment: presiding justice, state Court of Appeal, San Francisco, 1982.

Confirmation: November 1986 for a 4-year term.

Comments: A Tobriner protégé and former labor lawyer who once served on the Agricultural Labor Relations Board, has surprised observers with a centrist position on key issues and a swing vote on some death-penalty cases. Also wrote the search rulings in Proposition 8.

MALCOLM LUCAS

Associate Justice
Age: 59
Native of Berkeley, California.

Education: USC (AB, JD).

Appointment: by Governor George Deukmejian on April 6, 1984, to fill the unexpired term of Associate Justice Frank Richardson.

Prior to appointment: judge, federal District Court, Los Angeles, 1971-84.

Confirmation: November 1986 for an 8-year term.

Comments: Governor George Deukmejian's former law partner. Considered the Court's most conservative member and its most frequent dissenter.

EDWARD PANELLI

Associate Justice
Age: 54
Native of San Jose, California.

Education: Santa Clara University (BA, JD).

Appointment: by Governor George Deukmejian on November 2, 1985, to fill the unexpired term of Associate Justice Otto Kaus.

Prior to appointment: presiding justice, state Court of Appeal, San Jose, 1984-85.

Confirmation: November 1986 for a 4-year term.

Comments: Conservative, but not rigid. Largely an unknown quantity at this point. Some observers see him moving to the center in the manner of U.S. Supreme Court Justice Harry Blackmun.

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will give no interviews to the press, taking questions only in writing. Panelli says he plans to stay out of the Court races entirely, if he can. "I learned early on that if they're not making war with you, you'd better stay out."

For Mosk, the problem may be somewhat different. Initially, he was targeted by some of the groups opposed to Bird. But Mosk, who is 73, delayed as long as possible before announcing for another 12-year term. His refusal to declare apparently held off some of the opponents, while others backed off because of his strong ties to the legal establishment and fears the anti-Bird movement would appear too partisan if all the targeted justices were appointed by Democrats. With his long service in state government, including 22 years on the high Court and a term as attorney general, Mosk is comparatively well-known to California voters and has consistently had the highest favorable rating of any justice up for election. He, too, says he will not actively campaign and plans to spend no more on the election than the cost of filing.

Few friends

Bird, on the other hand, goes into the election with few political friends. Some political liberals who might have been expected to come to her aid have been scared off by public and private polling which shows at least some voters willing to vote against candidates who support Bird. Fearful of a backlash, some Democrats, including a relatively safe candidate like Secretary of State March Fong Eu, urged Bird to step down rather than seek another term — a proposal Bird rejected as more harmful to the system than her defeat at the polls.

California state Senator Gary Hart, a Santa Barbara Democrat who faces a potentially difficult election challenge, said he finally decided to come out against Bird because, "I just didn't want to have to keep defending her."

"I don't agree with a lot of the things she's done. Under those circumstances, it's difficult to keep appearing before groups and have to answer questions," Hart added.

The opponents of Bird and the other justices have had their own set of handicaps. For one thing, the issue has been seized by any number of self-promoters, none with much success. A number of Republican candidates thought they could propel themselves into higher office by being the most outspoken Bird opponent. This led to some of the season's more tawdry campaign episodes, including the appearance by GOP Congressman Bill Dannemeyer of Fullerton, a would-be U.S. Senate candidate, with a stuffed turkey he named "Rosie." Los Angeles County Supervisor Mike Antonovich used money raised under state laws and that could not be used in his U.S. Senate campaign to appear in what he promised to be the first of a series of television ads against Bird. Antonovich lost the primary, of course, and the second commercial was never made.

Political consultants also found the campaign against Bird lucrative. The Butcher-Forde firm of Orange County organized direct-mail fund raising for Californians to Defeat Rose Bird. They managed to raise more than $2.5 million last year but spent nearly all of it on overhead and the costs of the mailings themselves. The California District Attorneys Association, which stayed neutral on the justices eight years ago, geared up for an anti-Bird campaign before discovering that the effort might jeopardize its tax-exempt status. It formed a spin-off organization — the Prosecutor's Working Group. Relying primarily on free assistance from its members, it has not been as active as hoped, according to Kathryn Canlis, head of the group and a chief deputy district attorney in Sacramento County. The group can provide speakers to other organizations. Other groups sponsored a series of radio commericals that were announced with great fanfare but lasted only a few weeks.

But for all the miscues, advocates of change on the high Court have one big thing in their favor: Many can talk with genuine emotion about horrible crimes where criminals have had sentences or convictions reversed.

"Crime victims have emotional feelings. One is hard pressed when someone's grandchild is raped and mutilated," argues Janet Byers, spokeswoman for both Californians to Defeat Rose Bird and Crime Victims for Court Reform. "We are certainly trying to present facts. Some of them are emotional, that's true. But one should not have to squelch the emotional facts in voting."

"Yes, we will pick those stark, and heart-rending examples, but I see nothing wrong with that," adds District Attorney Jagels. "Strategically, Bird supporters would love, just love, this campaign to devolve into a set of law-review articles because they can't lose that way. We're not going to let that happen. You should not have to be an expert in criminal law to look at some of these decisons and say, 'That's ridiculous.'"

Bird's response can't match the emotions. In an interview with *San Francisco Focus* magazine, Bird said emphasizing these stories amounted to the "exploitation of people's natural feelings of horror . . . ."

"The first reaction is, how horrible the crimes are. But our job is not to determine whether we like a particular individual or not — our job is not to mete out punishment to somebody because we think they're a terrible person and should never be out on the streets again. Our role is to ensure that a fair trial was given," she added.

The attack by Court opponents will play heavily on the fact that no one has been executed in this state under its current death-penalty statutes and that Bird has voted against each death-penalty case to come before her. The *California Poll* showed that 61 percent of the voters believe Bird personally opposes the death penalty and that this bias has affected her votes.

There is no sign the voters have been swayed by the chief justice's statements that she would vote to uphold a constitutional death-penalty decision and that her feelings about the punishment, which she declines to reveal, have no impact on her rulings. It is more likely they believe the simple appeal of her opponents, "She hasn't found *one* case she agrees with."

"It's impossible to think that the best prosecutors, the best judges are wrong that often," maintains Canlis.

Damage to the Court

Backers of the justices, though, take solace in the fact that a great majority of voters still believe in the independence of the Court and don't want to damage it. They also believe the court system is the one place left in the governmental system where the "little guy" can get a fair break. Perhaps Bird, but more likely Grodin and Reynoso, can be saved with this argument.

In theory, making this argument is a difficult problem. Voters have to be educated about the role of the Court and how it differs from that of the Legislature or executive. "One of the brilliant aspects of our system is that we have the courts, which are just a little slower to change. If we change the ground rules and make the courts as subject to the shifts of the political winds, we risk taking away a significant aspect of stability in the political process," argues John Emerson, a Los Angeles attorney with the firm of Manatt, Phelps, Rothenberg and Tunney and an organizer of the Citizens Committee to Keep Politics Out of the Court. The group, headed by former Governor Pat Brown, is dedicated to retaining all six Court justices.

In practice, a sly campaign can make things a little more palatable for a mass audience. Emerson cites the campaign against Proposition 39 — the 1984 Deukmejian-backed ini-

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tiative to take reapportionment out of the hands of the Legislature and give it to a special panel of judges. In that campaign, politicians were pictured as blatantly conniving with judges to get the decisions they wanted. Court opponents might be pictured in a similar role, with big-business-dominated politicians pressuring judges for favorable rulings to the detriment of the "little guy."

But that approach may not appeal to Bird who has made it clear she will win with a high-level campaign or lose in the attempt. ' It's important in this campaign that the process be done properly," said Glazer. "Yes, she wants to win, but she wants to win the right way, not by manipulating public opinion through emotional symbols. She wants the campaign to be conducted in an honest and truthful manner. That's the proper way to win. It protects the institution."

In part, Bird has no choice but to adopt this strategy since she is campaigning on her own. For one thing, cannons of judicial ethics restrict her ability to talk about pending cases or even some of the rationale behind her past decisions because it may reflect on issues still pending before the Court. For another, any perceived deviation from the line only provides ammunition to opponents that she is somehow "not judicial" in her approach. She was widely criticized, for example, for her complaints that her opponents were "bully boys" and "little Eddie Meeses" trying to dominate the courts.

But it is clear Bird believes the attacks on her are a "power play" by her opponents "to ensure whoever sits here will do the bidding of whoever has the most political power . . . ."

And the charge of "Court packing" by the Republicans and Deukmejian follows. The governor, of course, has repeatedly stated his opposition to Bird, and a standard line from his speeches is that he is a man who appoints "common sense" judges to the bench. But the governor has held off on formally opposing other justices, although he has said on the basis of current information he is inclined to vote against both Grodin and Reynoso. The governor would relish the opportunity to appoint three new justices, which, along with Panelli and Lucas would mean five of the seven votes would be his appointees. But too-eager opposition to three justices might lend credence to the Court-packing charge.

The defeat of several justices would bring obvious philosophical changes to the Court. But it is not as clear what changes, if any, will come to the system as a whole.

Those who urge the defeat of the justices say their efforts will have no lasting effect and, in fact, will correct a judicial system now out of control. It is not they who are throwing the system out of kilter but the justices themselves by rendering decisions that are far afield from the legal mainstream. The electorate will merely be putting things back on an even keel.

It is clear, however, there are those among Bird's detractors who are openly looking to bend the judiciary to their point of view. Los Angeles Supervisor Antonovich, for example, recently announced he would establish a committee whose purpose was to review the records of judges in the Courts of Appeal and oppose those found wanting (see related story, page 447).

But to Court defenders, defeat of the justices means the court system will never again be the same. Judges will never be able to decide controversial cases without at least a glance at what voters might do in a subsequent election and "fundamentally put at risk the separation of powers," Emerson argues. "The threat is that we'll end up with an extremely politicized Court. If these justices are thrown off the bench, the message that will go out to every judge in the state is that you'd better toe the line of the new right or we're going to go after you, too. That's a very scary message."

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9 = Print Fec Summary Report
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3 = Vendor master list
4 = Receipt transaction list
5 = Disbursement transaction list
6 = Mailing labels
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STANDING IN DISPUTE

The Court's nationa
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By BOB EGELKO

The California Supreme Court of Chief Justice Rose Bird is known as a criminal defendant's Court — but its most important criminal-law decision of recent years overturned decades of its own pro-defendant rulings on police searches.

The Bird Court is known as a civil plaintiff's Court — but some of its most significant civil-law rulings of the 1980s upheld state laws restricting the right to sue doctors and hospitals for malpractice.

It is known as a Court that examines voter initiatives with an exacting — some say hostile — eye, striking two measures from the ballot in the last three years and narrowly reading such popular measures as the Proposition 13 property-tax cut of 1978 and the Proposition 8 crime initiative of 1982. Yet the Court also has gone to great lengths to declare initiatives constitutional, rewriting major provisions of a 1978 death-penalty measure and stretching the state Constitution's single-subject rule to its outer limits to preserve Proposition 8 — the Victims' Bill of Rights.

It is an activist Court, but no more so than the pre-Bird Court of the late 1950s to the early 1970s, when the California Supreme Court's reputation was at its zenith. In fact, some see a more restrained trend in the rulings on searches and malpractice, both of which deferred to state law. Bird dissented from those decisions but wrote an opinion for a unanimous Court in 1984 that avoided the issue of assessing a wife's property interest in her husband's medical degree by deferring to a legislative compromise.

The Court's national influence under Bird may have waned but has not disappeared. Its influence was illustrated strikingly this year when the U.S. Supreme Court ruled prospective jurors could not be challenged because of their race. That decision could be traced to a 1978 California Supreme Court ruling by Justice Stanley Mosk who, in the face of a contrary 1965 U.S. Supreme Court precedent, relied on fair-trial guarantees in the state Constitution. Mosk's reasoning was gradually adopted by a number of other state courts, some federal courts — despite the conflicting Supreme Court standard — and finally by the national high court.

Ronald K. L. Collins, a visiting law professor at the University of Puget Sound and an authority on state constitutional law, marveled at the effect of Mosk's ruling. In the state constitutional field, Collins said, "California is at the forefront, and Stanley Mosk is carrying the banner."

But most scholars and judges interviewed agreed that the Court over which Bird has presided since 1977 has declined in national stature from those of her predecessors — Phil Gibson (1940-64), Roger Traynor (1964-70) and Donald Wright (1970-77).

"The California Supreme Court was, between 1960 and

Bob Egelko covers the state Supreme Court for the Associated Press.

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stature has waned Bird

1970, far and away the most influential court in the country, and the most prestigious as well. Since then, its prominence has been eclipsed," said Gary Schwartz, a UCLA law professor specializing in torts, the field of civil injuries in which the state Court has been a pioneer.

"They're not cited (by other courts) as much as they used to be," said Arizona Supreme Court Justice James Duke Cameron.

"I think in areas outside state constitutional law, the impact of California Court decisions may well have diminished," agreed Washington Supreme Court Justice Robert Utter.

A variety of reasons were offered, grouped into three somewhat overlapping categories: the quality of judges, internal frictions and the changing legal and political climate.

Quality of justices

The quality of the Court's seven members is, of course, a subject for dispute.

No one faults the Court's productivity, with more than 120 written opinions each year and more than 3000 lower-court decisions reviewed — an output that has held up despite the unsettling effects of nine new appointments during the past nine years. It is also an experienced Court; even Bird, widely criticized at the time of her appointment for a lack of judicial background, now has served longer as chief justice than either Traynor or Wright.

If the Court majority can be described as liberal, as it has for most of the last 30 years, the justices are also more diverse than is sometimes supposed (see box, page 424).

When assessing the Court's quality, there is an inevitable comparison with Traynor who spent 24 years on the Court as an associate justice before becoming chief justice and who gained national renown for his bold, precedent-setting decisions.

"Nobody's replaced Roger Traynor anywhere," said Franklin Zimring, director of the Earl Warren Legal Institute at the University of California, Berkeley. "There dwelt one giant and many tall trees in the California Supreme Court of the 1950s and 1960s. I think even their friends would concede that very few trees in the current Court stand that tall."

"Traynor was a first-rate legal thinker. I don't think we have anyone like that, certainly, heading the Court or, frankly even on the Court," said Michael Moore, a University of Southern California law professor and one of the Court's most prominent academic critics.

Moore said both Jerry Brown and Ronald Reagan are to blame for basing Court appointments on "out-and-out" ideology, as opposed to talent." He excluded the recently retired Otto Kaus, a Brown appointee generally regarded as a scholarly moderate. But he also might have mentioned Wright, Reagan's first appointee, who enraged the then-governor by writing the 1972 opinion declaring the death penalty unconstitutional.

Bird cannot be faulted for falling short of Traynor as a judge. Most of her critics acknowledge her to be hard-work-

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ing and principled, noting her refusal to temper votes to reverse death sentences in the face of intense pressure and her dissenting opinion, issued shortly before her 1978 confirmation vote, that part of popular Proposition 13 was unconstitutional because it taxed identical properties differently.

But Bird has largely abandoned the chief justice's traditional role as a consensus-builder. Instead, she is the Court's most frequent author of separate opinions — both dissents (her Proposition 13 opinion) and concurrences (her opinion last year that government employees have a constitutional right to strike). Such forays may explore new legal frontiers, but they may also deprive the Court of leadership and a coherent, unified voice.

Bird v. Clark

Bird also was at the center of an event that battered the Court's public image — the 1979 investigation into newspaper allegations that controversial rulings were delayed until after the 1978 election. The most important case was the *Tanner* decision, which said the "use a gun, go to prison" law had not repealed judges' authority to put gun-wielding felons on probation. The Court later reversed that decision.

The investigation found no improper delay or evidence of wrong-doing but showed the Court to be a maze of petty feuds and mistrust, much involving Bird and former Justice William Clark, a Ronald Reagan appointee who left the Court to join Reagan in Washington.

The hearings were made public at the request of Bird, apparently without consulting her colleagues. Open hearings were then being demanded by the Legislature and the news media, but the decision has since been denounced by many legal commentators. Mosk, who attacked the decision at the time, filed a lawsuit that succeeded in closing the hearings

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Gibson

Kaus

before he testified.

"Part of the prestige of any court is its majesty and its mystery," said John Oakley, a former clerk for Wright who now teaches law at UC Davis. "I think people learned more than they ever wanted to know about the inner workings of the Court at a time when they were the least collegial in recent times."

He said the decline of collegiality was due in part to Bird's actions when she joined the Court and "treated the staff of her predecessor as if they were agents of a foreign country." Oakley added that he considers Bird a judge of integrity and supports her retention.

Her defenders say Bird was unfairly blamed for an atmosphere of hostility created by some of the hold-over staff, who resisted her administrative innovations, and by some of her fellow justices who resented both her appointment and Brown's attacks on the judiciary. (An extensive account is in Betty Medsger's book "Framed," which defends Bird and criticizes Clark and Mosk.)

Edward Lascher, a Ventura lawyer and veteran Court-watcher, said the Court is finally recovering from the wounds of the *Tanner* hearings. But Oakley said the hearings inflicted lasting damage; no longer is the Court an "exalted forum," a place of "strong differences of opinion but great unanimity of heart."

Trend-setting tradition

Part of the mystique of the Gibson and Traynor Courts was based on their roles as trend-setters. The California Court ruled in 1955 that illegally-seized evidence could not be used in court; six years later, the U.S. Supreme Court applied the same standard to all the states. The federal Court's 1966 *Miranda* decision, requiring suspects to be advised of their rights to remain silent and see a lawyer, was similar to a California ruling the previous year. A 1962 Traynor decision allowing makers of defective products to be sued for injuries without proof of fault started a nationwide overhaul of product-liability laws.

The pattern was not unbroken: among California decisions reversed by the U.S. Supreme Court were those from the late 1950s upholding loyalty oaths, and rulings from the mid- and late-1960s denying free lawyers and court transcripts to poor criminal defendants.

But the number and prominence of trend-setting rulings "made it look like the California Supreme Court was staffed by a bunch of soothsayers," said Oakley.

That is no longer the case despite occasional exceptions such as Mosk's decision on jury selection. Last December, for example, the California Court ruled that random aerial searches for marijuana were an invasion of privacy; a few

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Traynor

Wright

months later, the U.S. Supreme Court reached the opposite conclusion. Religious displays on public property, state-funded abortions, and numerous issues involving searches, confessions and the death penalty are among other areas where the federal and state high courts disagree.

The changing climate makes it difficult to assess the recent work of a justice like Mosk — though Utter of the Washington Court (who also has a national reputation in state constitutional law) called Mosk "a superb judge, the equal of any in the country."

Mosk's most important tort ruling of recent years was a 1980 decision allowing victims of the generically-prescribed drug DES to sue all major manufacturers for damages according to their share of the market. The ruling has been adopted by a few other states but has not had nearly the impact of Traynor's tort decisions. In two later decisions, one by Mosk, the California Court itself limited the effect of the DES ruling.

Schwartz of UCLA said the ruling illustrates that "there is less of an opportunity now to innovate in a way that would be instantly acceptable and appealing."

Just as important has been the changing reaction of the public, visible long before the current election campaign.

Earlier Courts were not free of controversy. For example, a 1964 decision striking down an initiative that allowed housing discrimination led to the first serious campaign against justices since the current retention-election system was adopted by voters in 1934. When Wright in 1972 found the death penalty to be a violation of the state constitutional ban on "cruel or unusual punishment," opponents had a different response — an initiative, approved overwhelmingly that fall, overturning the ruling.

The Court's landmark 1976 decision declaring school segregation to be unconstitutional regardless of cause was reversed three years later by a ballot measure that grew out of the Los Angeles busing furor. The Court ruled in 1978 that a defendant partly responsible for an injury could be made to pay all of the damages if other defendants were broke. Eight years later the decision was partly overturned by Proposition 51, the "deep pockets" initiative passed by voters in June 1986.

Perhaps the most dramatic collision involved Proposition 8. Sponsors of the 1982 crime initiative said their chief target was a 20-year series of rulings by the state Court that put greater restrictions on searches and illegally-seized evidence than the U.S. Supreme Court imposed. Mosk wrote many of the rulings, including a key 1975 opinion allowing a defendant greater protection from searches under the state Constitution than under a similarly worded provision of the U.S. Constitution.

The initiative, which also covered topics ranging from insanity to school safety, was upheld by the Court in a 4-3 decision rejecting arguments that it violated a state constitutional provision limiting initiatives to a single subject.

Mosk's impassioned dissent concluded, "The Goddess of Justice is wearing a black arm-band today, as she weeps for the Constitution of California." He may have been anticipating a ruling of February 1985 when Grodin wrote for a 4-3 Court that Proposition 8 required state courts to follow federal standards on searches, wiping out in a single stroke most of Mosk's state constitutional rulings.

The Court and initiatives

The Court has not always deferred to initiatives, however, and has provoked some of its vehement public opposition with rulings on ballot measures. Perhaps the greatest controversy occurred in 1982, when a 4-3 decision allowed the use of legislative district lines drawn by the Democrat-controlled Legislature for the November 1982 elections, even though Republicans had qualified a referendum for the June 1982 ballot that blocked the legal effect of the new districts.

The ruling was not indefensible since the only other district lines available had been drawn a decade earlier and left the current districts unequal in population. But Wright, in a similar though not identical case in 1972, had used the prior district lines, and Bird's opinion opened her Court to charges of political partisanship.

The following year, for the first time in a quarter century, the justices removed an initiative from the ballot, ruling in an unsigned 6-1 decision that a reapportionment measure by Sonoma Republican Assemblyman Don Sebastiani was beyond the voters' power to enact because the state Constitution allows only one reapportionment per decade.

In 1984 the Court again struck down a proposed initiative

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with important political consequences — a measure that would have added California to the states calling for a constitutional convention to draft a federal balanced-budget amendment. The 6-1 opinion (by Broussard) said only laws, not advisory measures, could be the subject of initiatives.

The vague wording of initiatives has also been a frequent target of the Court. A Proposition 13 provision requiring a two-thirds local vote for undefined "special taxes" was interpreted narrowly, in a series of rulings by Mosk, to allow a variety of local taxes. Proposition 13 sponsor the late Howard Jarvis has an initiative on the November 1986 ballot (Proposition 62) to overturn those rulings.

On an even stormier issue, a 1983 opinion by Broussard said the 1978 death-penalty initiative required proof of intent to kill for a sentence of death or of life-without-parole. The initiative did not refer to intent to kill, but it was mentioned in the ballot pamphlet, and Broussard said the requirement was needed to avoid constitutional problems.

The ruling has been cited in 15 death-penalty reversals and could be the basis for about 80 more. But its future has been cast in doubt by U.S. Supreme Court decisions, public opposition and signs of reservations within the state Court itself. Lucas, in particular, said last fall that he would no longer be bound by the decision.

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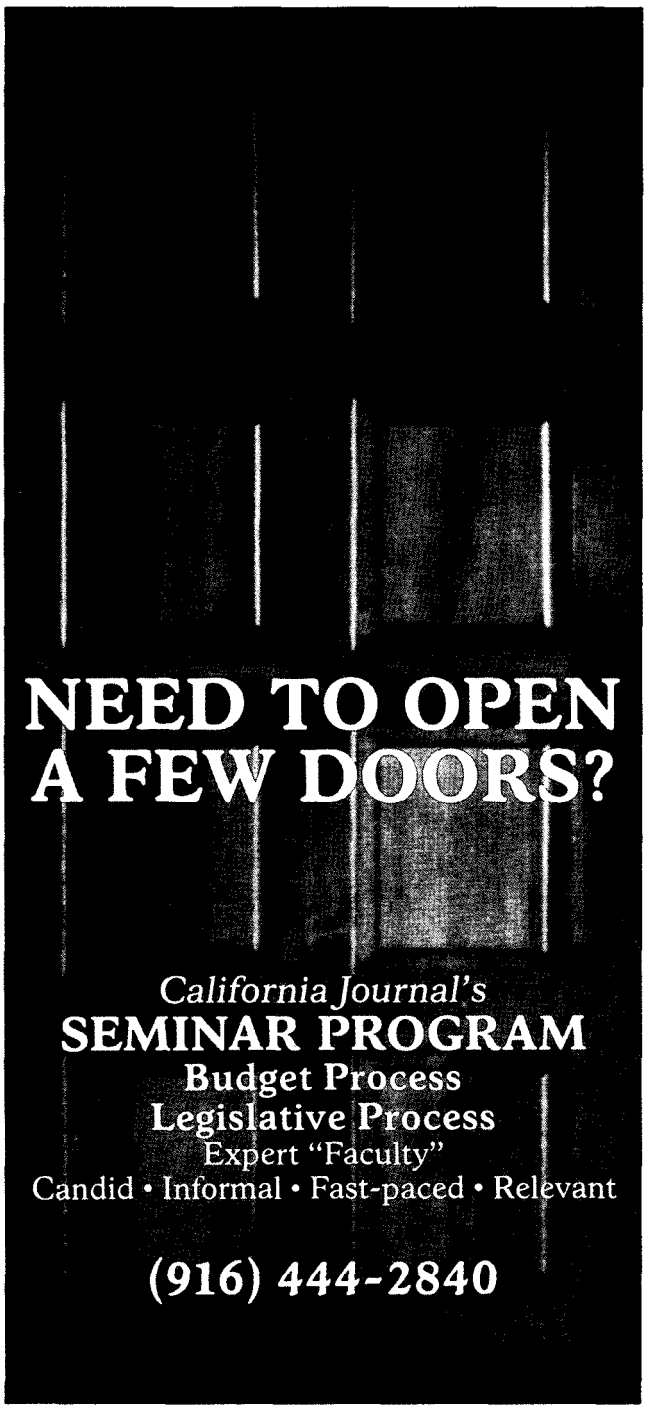

Death penalty

Probably no other issue threatens the Court's legitimacy among the public as does the death penalty. In the face of overwhelming public support for capital punishment, the Court has reversed, at this writing, 55 of 58 cases since the death penalty law was restored in 1977. The Court has agreed to reconsider three of the reversals, with deciding votes from the newly-appointed Panelli.

The chief justice, who has never voted to uphold a death sentence, notes she has never dissented alone and says she would uphold a death sentence if she found the trial to be fair and the law to be constitutional. But her critics say the record shows her to be both an ideologue and, in this instance, a hypocrite, unwilling to state plainly that she opposes the death penalty in all cases.

Bird "is obviously determined to prevent any executions in California, and has invented whatever arguments are available to achieve that result," Moore, the USC law professor, said in a *Los Angeles Times* column.

Defenders of the Court say its major rulings on the death penalty — Broussard's decision on intent to kill and a Kaus opinion striking down a jury instruction that a life-without-parole sentence could be commuted by the governor — were critically supported and legally sound. They also say the death-penalty law was clouded by the carelessly drafted 1978 initiative and note that most other states outside the South have records similar to California's in the last decade.

Bird also compares her record to that of Wright, whose 1972 decision and a ruling in 1976 overturned a total of 170 death sentences.

Many of Bird's death-penalty opinions involve the facts of individual cases and are hard to compare with Wright's sweeping constitutional rulings. The times have also changed. The 1972 ruling came shortly before the U.S. Supreme Court struck down every death-penalty law in the country and in a period when death-penalty opponents, although a minority, had strong influence in the legal and academic communities. The differences in the current high Court and the overall climate contribute to the damage that the issue inflicts on the California Court.

In other areas of criminal law, the Court has followed its predecessors in generally broadening the rights of defendants, particularly against trial procedures it regards as one-sided. The leader has been Mosk, whose rulings include a 1978 decision requiring an open preliminary hearing for a defendant indicted by a closed-door grand jury, and a 1982 opinion barring testimony recalled through hypnosis. Both decisions drew heat from prosecutors but survived attacks in the Legislature.

That has not been true, however, for some key decisions expanding civil liability, such as the 1978 "deep pockets" ruling attacked in Proposition 51. In another 1978 decision, the Court allowed a victim of a drunken driver to collect damages from a social host who served alcohol to the obviously intoxicated driver. The ruling followed an earlier decision allowing damages against bar owners. Both rulings were overturned by a heavily lobbied Legislature.

The Court appeared to be heading for a confrontation with the Legislature in 1983 when Mosk wrote a 4-3 decision saying that part of the 1975 malpractice law, which restricted suits against doctors and hospitals, discriminated unconsti-

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Clark

Richardson

tutionally against malpractice victims.

But later that year, the Court voted to reconsider the case, with the decisive vote coming from Grodin. In a series of decisions by Kaus, the Court then upheld the entire 1975 law, contradicting its reputation for pro-plaintiff activism and giving rise to talk of a new moderation. Those predictions gained credence in 1984 when Kaus, over a partial dissent by Bird, wrote an opinion denying punitive damages for breaches of ordinary commercial contracts.

"They have slowed down the 'damn the torpedoes, full speed ahead' approach of a few years back," said Lascher.

The conversion was not complete, as illustrated by a 1985 Broussard opinion allowing tenants to sue landlords for injuries caused by unsafe conditions, even if a landlord was unaware of the danger. But in the civil-liability field, at least, the Court majority appears to have shifted toward the center.

Other rulings

Rulings in other areas of civil law have generally favored environmental protection, workers' rights and racial and sexual minorities.

The key environmental rulings have included a 1983 decision by Broussard that rights to use and divert water could be modified to protect fish, wildlife and aesthetics, and a 1979 opinion by now-retired Justice Frank Richardson upholding local growth-limits that reduced property value.

Labor-law rulings have included Broussard's 1985 decision granting non-safety public employees the right to strike; a 1981 Mosk opinion upholding collective bargaining for state employees, and a 1980 Tobriner opinion allowing a fired worker to sue for reinstatement if the grounds for firing violated public policy.

Tobriner was also the author of a 1979 decision prohibiting public utilities from firing employees on the grounds of homosexuality; a 1980 decision upholding racial hiring quotas for a public agency that had discriminated in the past; and a 1982 decision interpreting state civil-rights laws to ban housing discrimination against families with children. Mosk dissented heatedly from the hiring-quota decision and from a 1982 ruling by Richardson upholding preferential admissions for minorities in graduate school.

One field in which the Court has gone beyond its predecessors involves the right to privacy, which state voters added to California's constitutional Declaration of Rights in 1974. The measure had been placed on the ballot by the Legislature, where debate centered on government collection of personal data.

The Court cited the right of privacy in a 1980 decision that struck down a Santa Barbara "anti-commune" ordinance and declared that people have a right to decide their own living arrangements; in Tobriner's 1981 ruling invalidating legislative restrictions on Medi-Cal abortions for poor women; in a 1985 ruling by Bird prohibiting a county from requiring general relief welfare recipients to live in a poorhouse; and in this year's decision by Broussard allowing public employees to refuse lie-detector tests. Bird, proposing to go further, wrote in a 1979 dissent that the right of privacy should allow cancer patients to buy Laetrile.

Another area of state constitutional innovation has been free speech. After the U.S. Supreme Court reversed course and ruled that a shopping center could exclude petition circulators, the California Court reached the opposite conclusion under the state Constitution, ruling in an influential 1979 opinion by Newman that the shopping center was serving the same function as public gathering place. In another decision, Mosk cited state constitutional free-speech protections last year in striking down a local ban on fortune-telling.

As the recent history of ballot initiatives shows, the Court's use of state constitutional law is vulnerable to public attack. It also is subject to the criticism leveled by then-Attorney General Deukmejian in a 1979 law review article that it is a "result-oriented approach" invoked by the Court when it disagrees with U.S. Supreme Court rulings.

But in the views of some legal experts, the development of state constitutional law offers an opportunity for the California Court to gain new stature in the coming decades.

If President Reagan's recent appointees move the U.S. Supreme Court further to the right, as expected, "the constitutional law of individual liberties in the late '80s and '90s will become increasingly the constitutional law of the states," said Collins, the Puget Sound professor. "State courts will look to each other for guidance, and California's influence will be even greater than it is."

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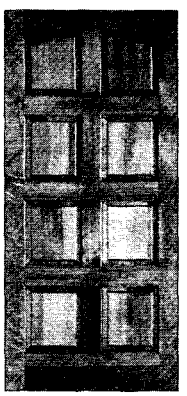

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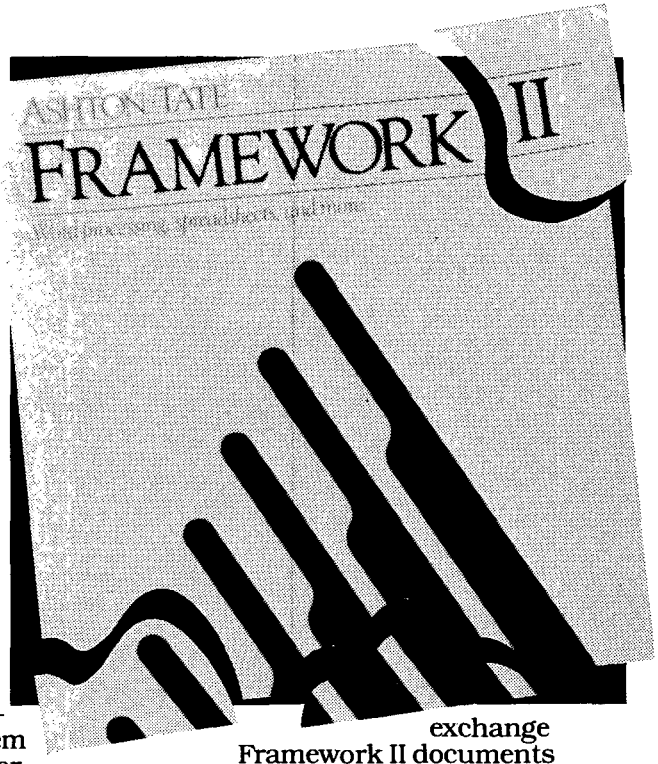

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A *CALIFORNIA JOURNAL* SURVEY

How biased is the Court?

By PAT SOBERANIS

Most of the campaign against Supreme Court Chief Justice Rose Bird has focused on her decisions in criminal cases. Her opponents claim Bird has gone out of her way to protect the rights of criminals, even if that means hampering prosecutors. Public opinion polls reflect this view; an August *California Poll* showed that 62 percent of voters feel Bird has "gone too far in protecting criminal defendants."

The symbolic centerpiece of this campaign is the Court's record in 57 death-penalty cases that have come before it since California reinstituted the penalty in 1977. But the Court's record in criminal matters is far more extensive

Pat Soberanis is a California Journal *intern.* Journal *interns Betsy Jones, Rick Ratcliff and Andrea Margolis also helped research this project.*

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than 57 cases. It includes nearly 10,000 decisions rendered between 1981 and 1985 alone.

To determine if the Court — and its individual justices — has an anti-prosecution bias, *California Journal* conducted two surveys of criminal-case decisions issued between 1981 and 1985 — one on petitions brought before the Court and another on written opinions. The surveys show two trends: When the Court allowed a lower-court decision to stand, the decision almost always favored the prosecution, but when the Court accepted a petition and issued an opinion, it more often than not ruled for the defendant.

Why is this record significant? When California switched to a system of confirming Supreme Court justices via the ballot box, it did so on the theory that the public should retain or defeat a jurist based on his or her record. But there seems to be no consensus among legal experts on how to view that record — or even what factors should be used to determine it. One way to determine whether California has a "pro-defense" Supreme Court is to examine the nearly 10,000 decisions issued by the Court between 1981 and 1985. From this, the *Journal* created a kind of judicial box score for each justice, as well as for the entire Court.

Admittedly, a box score is an imperfect tool, for it attempts to reduce complex legal decisions to simple black-and-white. A justice's "score" as pro-prosecution or pro-defense is not as easy to compute — nor as accurate — as, say, George Brett's batting average. Moreover, Supreme Court justices do not decide guilt or innocence or set out to line up behind one side of a disputed, lower-court judgement. Instead, they apply often-arcane points of law and set precedents that ultimately affect the defense or prosecution in a variety of cases. Yet despite these flaws, an examination of thousands of decisions reveals certain trends.

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Appeals and writs

There are two ways for a criminal case to come before the state Supreme Court — appeals and original proceedings. Appeals stem from a lower-court ruling by way of petitions for hearing or review. Original proceedings are petitions filed directly to the Court, such as writs of *habeas corpus*, mandamus and prohibition. All death penalty cases are automatically appealed and automatically accepted by the Court. A petition is granted a hearing before the Court only if a majority of justices feel that some legal error has occurred during the judicial process.

If a petition is accepted, the result is usually an opinion issued by the Court, reversing or upholding a lower-court decision. If it is rejected, the lower-court decision is allowed to stand. Together, these opinions and petitions constitute a body of decisions.

To determine whether a petition is pro-defense or pro-prosecution, the *Journal* identified a petitioner as the prosecution or as the defendant. In the case of *People v. Alonzo Lonnie Collins* (168 Cal.App.3d 839, 1985), for example, defendant Collins appealed his conviction to the Supreme Court which accepted the case. That decision was scored pro-defense. Had the appeal been denied, the case would have been scored pro-prosecution. Individual justices who voted with the majority received the same score; those in dissent were scored the opposite way.

Opinions were scored much the same way. If a conviction or sentence was upheld, it was scored pro-prosecution, as were all justices voting to uphold. Dissents from the majority were scored as pro-defense. If the conviction or sentence was overturned, it was scored for the defense, with individual justices scored accordingly.

Results

The *Journal* included 9973 criminal-case decisions in its five-year survey. Of those, the Court ruled for the prosecution 8697 times (87 percent), with each justice's pro-prosecution score no more than 5 percent on either side of the Court as a whole. A few minor trends emerged among individual justices but, for the most part, scores did not change significantly throughout the five-year period. One of the few trends belonged to Chief Justice Bird whose pro-prosecution rate increased from 78 percent to 87 percent between '81 and '85.

The picture changed dramatically when only the Court's written opinions were considered. Of the 184 written opinions, less than one-third (28 percent) went in the prosecution's favor. Moreover, a large spread developed between individual justices, with Bird marking one end of the spectrum (17 percent pro-prosecution) and Justices Frank Richardson and Malcolm Lucas the other (58 and 59 percent pro-prosecution, respectively).

Why is there such a disparity between the Court's overall record and its record with regard to opinions?

According to Drucilla Ramey, executive director of the San Francisco Bar Association, petitions for hearing are granted only when a majority of justices perceive a problem with some phase of the legal proceeding, guaranteeing at least the groundwork for disagreement. She sees the disparity between Bird and Lucas as an indication that "judicial philosophy colors cases which are taken."

Box scores

David Townsend, campaign manager for Justice Joseph Grodin, agrees that cases are reviewed only when there is a problem and, therefore, "the likelihood is . . . they (will) find something wrong" and rule for the defense more often than for the prosecution.

Jon Hopkins, executive director of the anti-Bird California District Attorneys Association, says that most appeals are filed by the defense and that many of those are "frivolous," rejected out-of-hand by the Court and accounting for the overwhelming number of pro-prosecution decisions found among the denied petitions.

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Numbers are always open to interpretation, and there is wide disagreement about the value of this kind of survey.

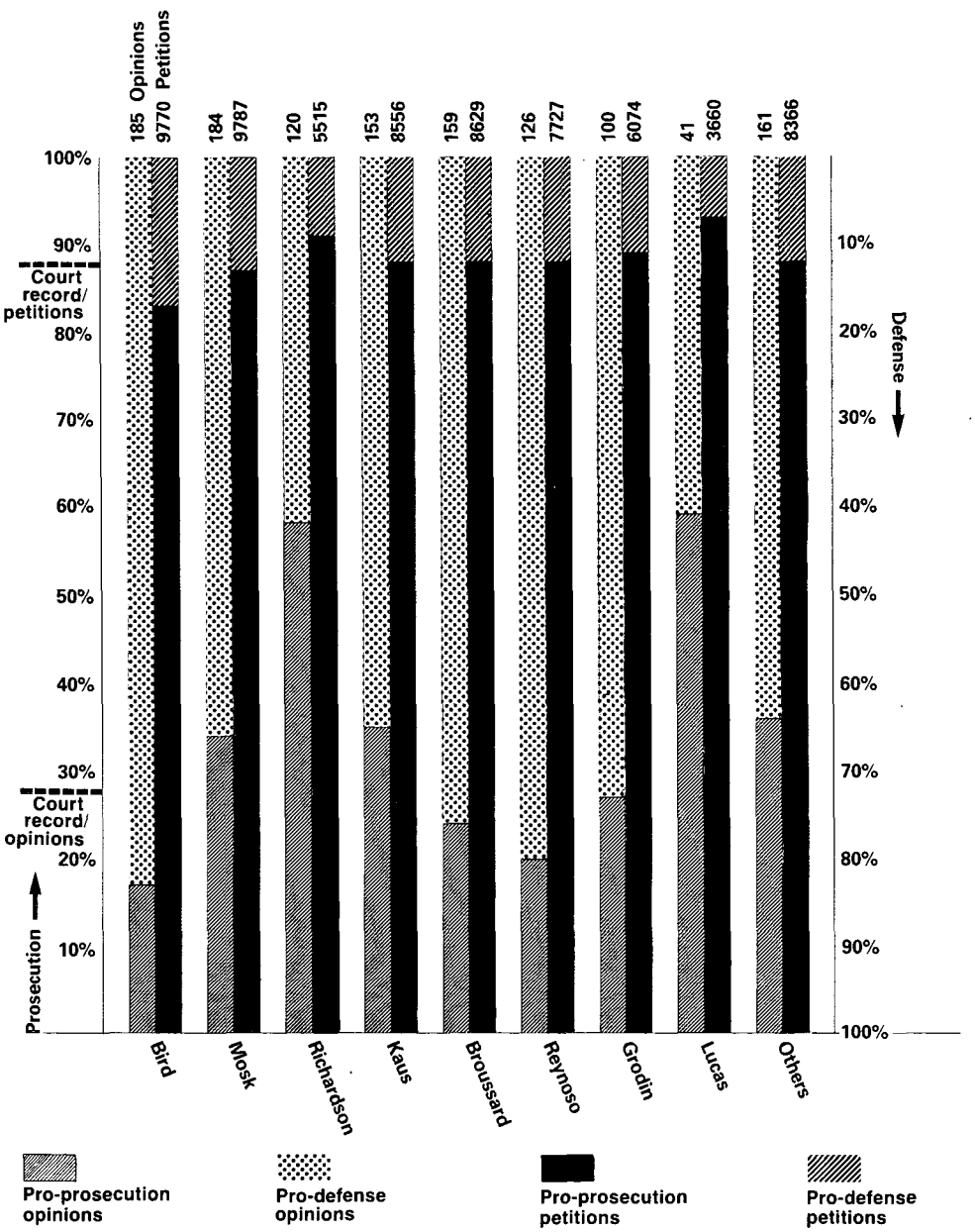
Anti-Bird forces, for instance, discount the vast majority of her pro-prosecution decisions because they involve only denials, focusing instead on her opinions as evidence the chief justice is soft on criminals.

"It is totally, utterly irrelevant to issue the Court's record" on decisions where appeals are denied because those decisions do not set precedents that affect other cases, said Ed Jagels, Kern County District Attorney and a spokesman for the anti-Bird Crime Victims for Court Reform. In other words, a reversed conviction ripples throughout the system. For example, *People v. Carlos* (35 Cal 3rd, 131, 1984) established that a murderer had to intend to kill his victim before being given the death sentence. A subsequent case, *People v. Garcia* (36 Cal 3rd, 539, 1984), applied the *Carlos* rule to all other cases not yet final — a decision that not only reversed Garcia's sentence but has been cited as precedent to reverse 14 subsequent death sentences and may affect as many as 50 other judgements.

John Poulos, a professor of law at UC Davis and a specialist in criminal and constitutional law, said the box-score ratings are not relevant "if you're talking about the nature and quality of judicial craftsmanship." But, Poulos added, the total numbers are relevant "if you're trying to gauge whether a judge is pro-defense or pro-prosecution."

Townsend, who is managing an embattled jurist's confirmation, thinks the entire box-score concept is "dangerous . . . because the Supreme Court does not judge guilt or innocence but merely makes a ruling on a fair trial."

Steven Glazer, spokesman for Bird's Committee to Conserve the Courts, argues that "box scores only perpetuate the myth that judges vote their personal views when in fact they are trying to uphold the law and the Constitution." Glazer further emphasizes that the convictions of a vast majority of criminals in California are never reviewed by the Court and that most serve the term meted out to them by a lower court.



Caveats

Once again, this survey should be accepted for no more than it is — an attempt to document a broad picture of Court decisions in the area of criminal law. It is not a finely-tuned study. Law at the appellate level, especially at the Supreme Court, is the law of nuance rather than the law of absolutes. For example, in some cases a conviction or sentence may be overturned (pushing it into the pro-defense column) when, at the same time, the Court may also affirm certain legal practices or precepts beneficial to prosecutors.

Simplistic, yes; irrelevant, no. It is significant to examine — even cursorily — a large body of Court work to see, for example, that 85 percent of Chief Justice Rose Bird's decisions tend to favor prosecutors, and that her decision-making, as a whole, is not much different than that of other justices. It is also significant to note that her written opinions overwhelmingly favor defendants and that, in this area, she differs greatly from some of her colleagues.

Two other points should be noted. First, some appeals to the Court are accepted pending the outcome of a so-called "lead case" — one previously accepted by the Court and containing common legal issues with later cases. The later appeals are called "grant and hold" cases because the appeal is granted, then held until the lead case is resolved. Thus a pro-prosecution or pro-defense label would depend on the lead case. But because tracing grant-and-hold cases back to their lead cases is a massive job, beyond the *Journal*'s resources, grant-and-hold cases were judged for these purposes on their own merits. If a defendant's appeal was granted, for whatever reason, it was scored pro-defense.

Finally, not all justices record their dissenting votes on appeals denied by the Court. In fact, only Bird, Cruz Reynoso and Stanley Mosk record every vote. Therefore, "scores" for the other justices may be skewed in a limited way because all of their dissents are not recorded. This procedure does not affect written opinions; it only affects appeals the Court refuses to hear.

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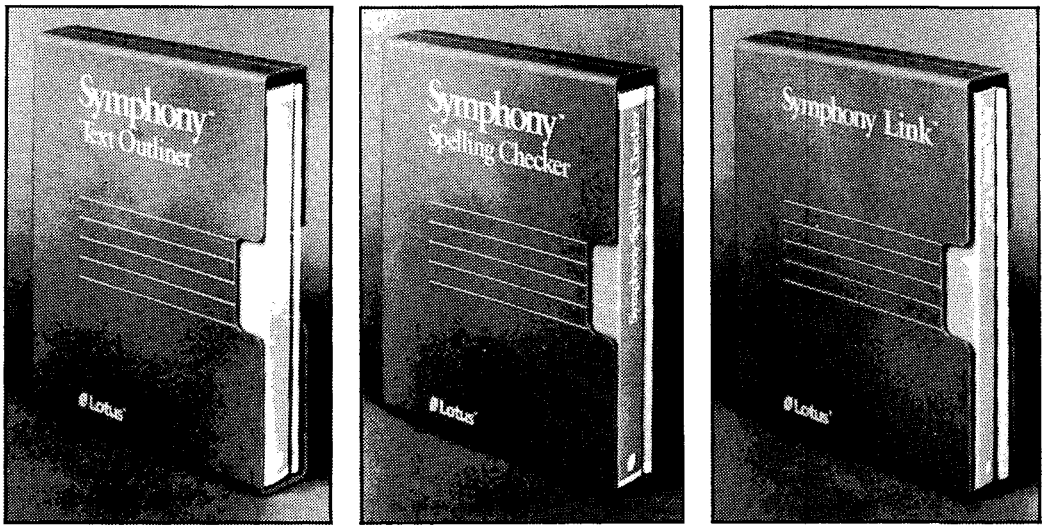

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BIRD, GRODIN, REYNOSO:

Are they a "gang of three"?

By BARRY WINOGRAD

Is there a "gang of three" on the California Supreme Court composed of Chief Justice Rose Bird and Justices Cruz Reynoso and Joseph Grodin, all rendering an indistinguishable brand of liberal justice?

Opponents of Bird, Reynoso and Grodin say yes, providing a reason to vote against all three judges in November. The opponents claim Bird, Reynoso and Grodin present a common philosophical front as appointees of former Governor Jerry Brown, and that this is reflected in their decisions. (Some groups also have targeted Justice Stanley Mosk, a 21-year Court veteran.)

However, based upon a review of California Supreme Court decisions in 1984 and 1985, the "gang of three" premise is unsupported by statistical evidence. In this study, every decision issued in 1984 and 1985 was examined — 277 in all. This time-frame coincides with Governor George Deukmejian's appointment of Justice Malcolm Lucas in April 1984 to replace Justice Frank Richardson and provides a limited but stable period to examine decisions, free from the turnover that has marked the Court during the past decade.

The study focused on three main questions. How often did any two judges agree on the result of a case, whether in the majority or in dissent? How often did any two judges agree on the majority or lead opinion rendered by the court? And how often did any two judges agree in separate opinions labeled concurrences, dissents, or concurrences-and-dissents? The figures on opinions are especially significant in determining common judicial perspectives.

On the question of whether there is a "gang of three," it can be stated without equivocation that there is no common front composed of Bird, Reynoso and Grodin. Of the 277 cases examined, there was not one opinion in which the three stood united apart from any other members of the Court. Indeed, there were only three opinions in which they were joined by one other judge. In every other case finding Bird, Reynoso and Grodin agreeing on an opinion, they were joined by two or more fellow justices. Further, although Reynoso has been Bird's most frequent ally, they joined in the same opinion for only 63 percent of the 1985 cases, down from 74 percent the previous year. On case results, they agreed about 81 percent of the time in both years.

Reynoso agreed more often on results as well as on opinions with Justices Otto Kaus and Allen Broussard — two well-respected jurists widely considered middle-of-the-road in judicial philosophy — than with the chief justice. Notably, Reynoso's opinion alignments with Kaus and with Broussard were about 20 percent higher than the comparable figure for Bird.

A comparison of Bird with Grodin yields findings similar to those for Reynoso. Grodin, too, agreed more often with Kaus and Broussard than with the chief justice , with both opinions and case results 20 to 30 percent higher than his alignments with Bird.

In 1985 Grodin and Bird signed the same opinion less than 50 percent of the time. Only Lucas had a lower rate of opinion alignment with Bird. Viewed from another angle, Lucas agreed more often with Grodin on 1985 opinions that Grodin did with Bird. These relationships were not very different for final votes: Grodin agreed with Lucas nearly as often in both 1984 and 1985 as he agreed with Bird,about three quarters of the time in the first year and about two-thirds in the second.

Philosophical divergence also was reflected in the number of individual decisions written by Bird and Grodin in 1985. Bird wrote 13 individual concurrences and 25 individual dissents, while Grodin authored 12 concurrences and 3 dissents of his own.

Thus, in about a third of all 1985 cases these two judges felt strongly enough about an opinion to chart their own course. Mosk, Kaus, and Lucas also had significant numbers of individual concurrences and dissents in 1985. The large number of individual opinions is a major reason that the alignment percentage for results is higher than those for opinions.

From another perspective, it is apparent that Bird, Reynoso and Grodin have agreement rates in keeping with the balance of the Court and do not stand apart as an isolated trio. Lucas, for example, voted with fellow justices about 60 percent of the time in 1985, and 70 percent of the time in 1984.

continued on next page

Barry Winograd is administrative law judge for the California Public Relations Board and a lecturer at Boalt Hall School of Law, University of California, Berkeley.

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VOTING ALIGNMENTS — 1984 RESULTS/OPINIONS

	BIRD	MOSK	BROUSSARD	KAUS	REYNOSO	GRODIN	LUCAS	RICHARDSON
BIRD	—	70.9	74.3	73.3	81.2	77.6	57.1	34.6
	—	60.2	67.3	56.4	74.3	64.3	45.7	23.0
MOSK	70.9	—	81.5	79.4	74.8	76.2	69.2	66.7
	60.2	—	74.1	69.2	70.1	68.2	66.7	59.3
BROUSSARD	74.3	81.5	—	87.7	87.6	92.2	75.7	51.9
	67.3	74.1	—	76.4	84.6	80.6	64.9	40.7
KAUS	73.3	79.4	87.7	—	83.8	91.3	75.7	68.0
	56.4	69.2	76.4	—	78.1	85.4	70.3	68.0
REYNOSO	81.2	74.8	87.6	83.8	—	88.2	73.7	48.1
	74.3	70.1	84.8	78.1	—	78.4	68.4	44.4
GRODIN	77.6	76.2	92.2	91.3	88.2	—	74.4	51.9
	64.3	68.6	80.6	85.4	78.4	—	69.2	48.1
LUCAS	57.1	69.2	75.7	75.7	73.7	74.4	—	NA
	45.7	66.7	64.9	70.3	68.4	69.2	—	NA
RICHARDSON	34.6	66.7	51.9	68.0	48.1	51.9	NA	—
	23.0	59.3	40.7	68.0	44.4	48.1	NA	—

VOTING ALIGNMENTS — 1985 RESULTS/OPINIONS

	BIRD	MOSK	BROUSSARD	KAUS	REYNOSO	GRODIN	LUCAS
BIRD	—	64.2	75.6	67.5	81.6	69.4	45.8
	—	53.7	61.2	51.0	63.9	47.1	31.7
MOSK	64.2	—	73.2	66.7	72.4	71.6	69.9
	53.7	—	66.5	55.1	63.8	61.1	58.2
BROUSSARD	75.6	73.2	—	90.2	91.3	88.1	60.9
	61.2	66.5	—	84.3	88.8	79.9	54.1
KAUS	67.5	66.7	90.2	—	82.9	89.5	65.9
	51.0	55.1	84.3	—	80.3	78.3	55.1
REYNOSO	81.6	72.4	91.3	82.9	—	86.1	59.4
	63.9	63.8	88.8	80.3	—	75.3	48.9
GRODIN	69.4	71.6	88.1	89.5	86.1	—	65.8
	47.1	61.1	79.9	78.3	75.3	—	55.5
LUCAS	45.8	69.9	60.9	65.9	59.4	65.8	—
	31.7	58.2	54.1	55.1	48.9	55.5	—

The charts show the frequency with which each justice of the Supreme Court agreed with his or her colleagues during the years 1984 and 1985. Figures on a white background reflect the percentage of time a pair of justices agreed on the results of a case. Figures on a dark background reflect the percentage of time the justices joined in the same opinion. The method for the current study is based on a previous study of 1981-82 state Supreme Court cases published in the California Law Review, which, in turn, was patterned after studies of the U.S. Supreme Court by the Harvard Law Review.

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The Court's other members had comparable rates of agreement on case results. Further, the range of difference between any single justice and the rest of the Court's members typically was only 20 to 30 percent, again on the order for the Bird, Reynoso and Grodin figures.

The level of broad agreement within the Court also is demonstrated by unanimous decisions in about 25 percent of the cases, suggesting that the Court as a whole often agrees on the need to correct lower court errors. (There were 33 unanimous decisions — out of 110 — in 1984, and 45 — out of 167 — in 1985.) Of these, Bird wrote 15, Reynoso wrote four, and Grodin wrote eight. Lucas participated in many of these decisions after his appointment early in 1984, indicating further, at least in some instances, that clear-cut philosophical differences are absent.

The findings and conclusions from this study are not entirely surprising as they are more or less in line with the results from similar studies in the past. A review of 1982 California Supreme Court decisions by Professor Stephen Barnett at Berkeley, for example, showed that most Court members shared agreement with other justices about 60 to 70 percent of the time across the board.

Studies of opinion alignments on the United States Supreme Court, carried out annually by the *Harvard Law Review*, suggest that the California experience is not unique despite claims that the state Court is marked by extreme liberal activism.

The three most recent studies show that the nation's highest Court also has widespread agreement. As in California, 20 to 30 percent of the U.S. Supreme Court decisions were unanimous and, with a few exceptions, most U.S. Supreme Court judges agreed with another judge's opinion in about two-thirds of the cases, give or take 10 percent.

But compared to California's highest Court, judicial voting blocs are more pronounced in Washington. For example, retiring Chief Justice Warren Burger and Justices William Rhenquist and Sandra Day O'Connor have agreed on opinions in 80 to 90 percent of all cases in the past three studies. At the other end of the spectrum, Justices William Brennan and Thurgood Marshall also agreed about 80 to 90 percent of the time. There was no comparably high rate of opinion-joining by any bloc on the California Court, with the rates for Broussard, Kaus and Reynoso averaging several percent less, and the differential range separating the state Court members was more compact.

In the last analysis, the statistical evidence does not support the claim that Jerry Brown bequeathed a set of judicial clones who share views dramatically isolated from others on the Court. This being so, it places an added burden on the justices' opponents to explain why all three justices should be attacked as a group. The November reconfirmation election results may well depend on opponents' ability to make that case or to obscure the differences so the public does not notice.

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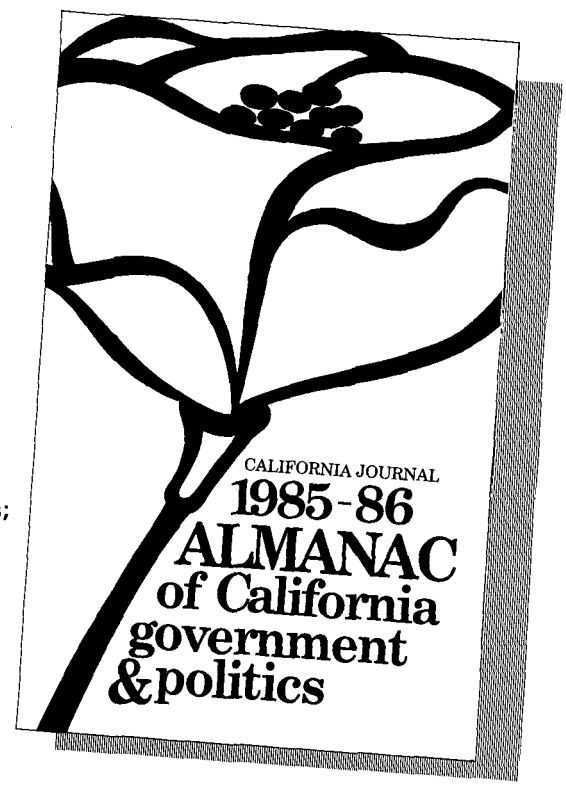

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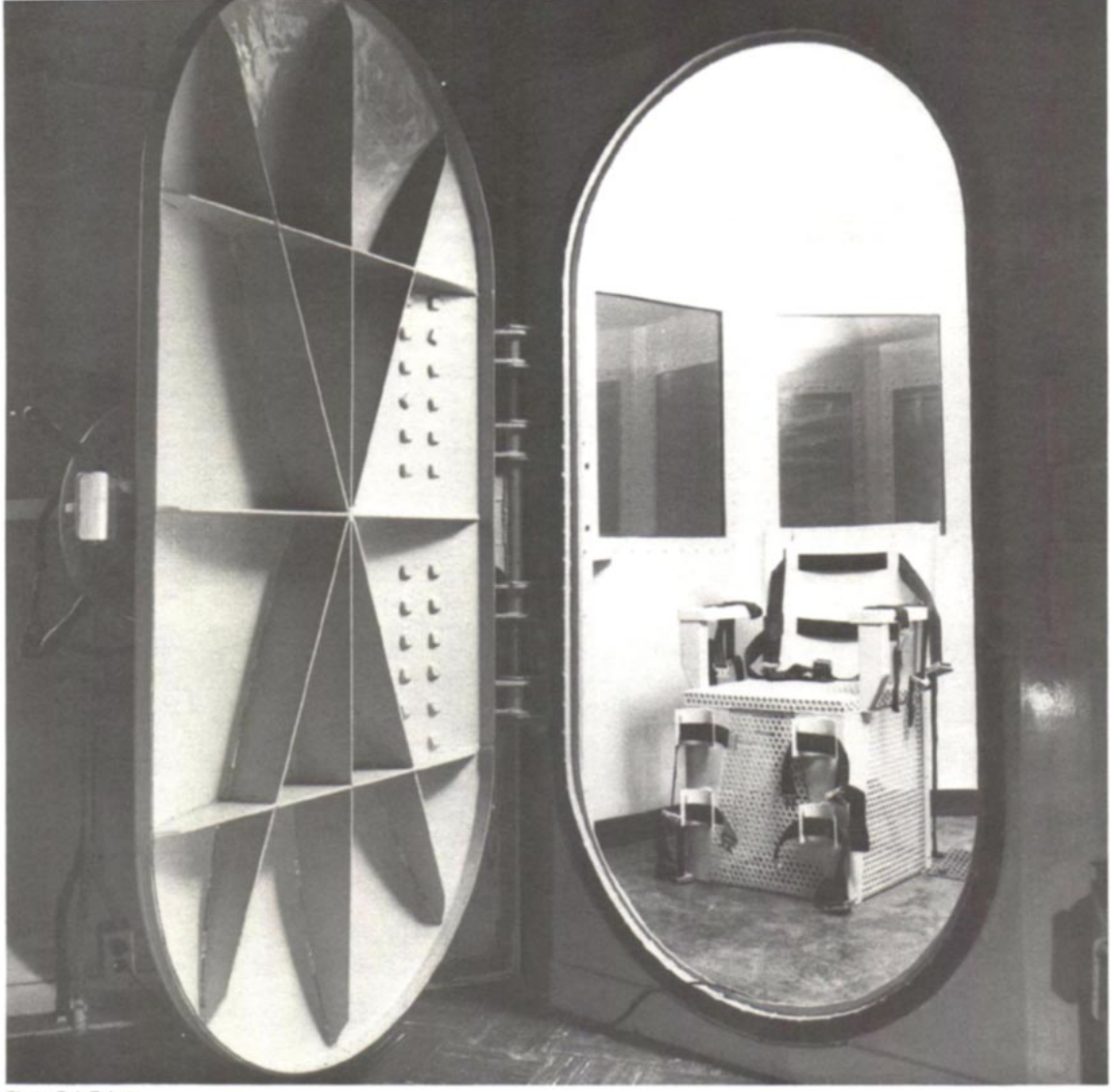

Photo: Bob Eplett

A status report on the death penalty in California

By A.G. BLOCK
and RICK RATCLIFF

Believe it or not, a majority of Californians think Chief Justice Rose Bird *is* qualified to serve on the state Supreme Court. Qualified or not, those same voters want her off the Court. The reason, according to an August 1986 *California Poll*, is Bird's record on the death penalty. To date, Bird has voted to reverse all 57 death sentences that have come before the Court, even though three of those sentences were upheld by a majority of her colleagues.

Thus, the campaign to oust Bird and two of her colleagues (Joseph Grodin and Cruz Reynoso) has crystalized around the death penalty. Their foes hammer at the Court's record, arguing that California lags far behind other states in executing criminals because of the Court's anti-death-penalty bias.

California does lag behind some states in restoration of the death penalty, and the California Supreme Court's reversal rate in capital cases is more than twice the estimated national rate for state appellate courts. Yet there seems, at this point, no nationwide rush to execute prisoners, and studies reveal that delays experienced in the California court system for capital cases are common to all states with death-penalty laws.

When Gary Gilmore died before a Utah firing squad on January 17, 1977, it marked the first time in 10 years that a death sentence had been carried out in the United States. Since Gilmore's death, 55 other executions have been carried out nationwide, with nearly half occurring in just two states — Florida and Texas (see box, page 444). There have been only three executions west of the Rocky Mountains (Gilmore in Utah and two in Nevada), and in all three cases, the accused chose not to appeal the sentence.

And although most death-penalty

Rick Ratcliff is a California Journal *intern. A.G. Block is managing editor of the* Journal.

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laws have been on the books since the 1970s, 80 percent of all executions have taken place during the past three years. Only 12 states have put a prisoner to death and this accounts for less than a third of the states with death-penalty statutes, less than a quarter of all the states.

A checkered history

Since San Quentin's gas chamber opened for business on December 2, 1938, 195 prisoners have been strapped in and executed by the state of California, the last being Aaron Mitchell in 1967. Mitchell was convicted of killing a Sacramento police officer. But state-sanctioned killing of condemned felons ended in February 1972 when California's death-penalty law was struck down as "cruel and unusual punishment" by the state Supreme Court.

Proponents of capital punishment reacted quickly to the ruling. Led by then-state Senator George Deukmejian, they placed Proposition 17 on the November 1972 ballot, amending the state Constitution by declaring that capital punishment was neither cruel nor unusual. The measure passed 68-32 percent, and the following year Deukmejian authored legislation to implement it. His law was crafted to reflect not only the mandates of Prop 17 but also perceived guidelines set down by a confusing U.S. Supreme Court decision (*Furman v. Georgia*, 408 U.S. 238, 1972). Nine separate opinions were issued in *Furman*, with the result generally interpreted to mandate death in certain cases and thus eliminate jury discretion in imposing the death penalty.

Four years later, however, the United States Supreme Court seemed to reverse itself by declaring a mandatory death penalty unconstitutional (*Gregg v. Georgia* (428 U.S. 153, 1976). The federal Court in effect said the jury must be given the discretion to mete out a less stringent punishment given certain mitigating circumstances. California was among 20 states whose death-penalty law did not meet this guideline.

Following the federal Court's lead, the California Supreme Court unanimously invalidated the state law in 1976 (*Rockwell v. Superior Court*, 18 Cal. 3rd 420). A year later, Deukmejian crafted a new law that met federal guidelines. It was adopted over the veto of former Governor Jerry Brown and later upheld by the state Supreme Court.

But the new law was not strict enough for some conservatives, and in 1978 then-state Senator John Briggs sponsored yet another initiative (Proposition 7) that expanded Deukmejian's law to cover more felons. It passed overwhelmingly in 1978 (71-29 percent) and remains in effect.

According to legal sources, legal problems with the initiative have lengthened the so-called "shakedown" period that normally comes as the system attempts to fine-tune the death-penalty law to align it with the state Constitution.

For example, legal experts say the "special circumstances" section of the initiative was too vague. The initiative allowed the death penalty for an accomplice who intended to commit a felony but who may not have intended to kill. Under the 1977 law, that defendant would not qualify for the death penalty (a finding of special circumstances) because he or she did not actually do or intend to do the killing.

In August 1984 the Court in *People v. Carlos* ruled that the death penalty required that a defendant intend to kill. Fourteen capital sentences have been reversed based on that ruling.

The '78 initiative also added a new category for special circumstance: murders that are especially heinous, attrocious or cruel. The Court struck that down as vague.

Death sentences have also been reversed because, among other reasons: a jury must be precisely instructed to weigh mitigating circumstances (*People v. Brown*); a judge may not tell a jury to disregard sympathy and pity when a jury is considering the death sentence (*People v. Easley*); it is a prejudicial "half-truth" for a judge to tell a jury that the governor may commute a life-without-parole sentence without also telling the jury that a governor may commute a death sentence (*People v. Ramos*).

Florida and elsewhere

Florida was one of a handful of states that did not have its death-penalty law reversed in the sweeping 1972 *Gregg* decision by the U.S. Supreme Court. Thus Florida has had a four-year head start in refining its death penalty.

Still, whenever the state of Florida executes another prisoner, the shock waves are felt acutely in California. Since 1979 Florida has sent 15 prisoners to its electric chair and is often cited as a state where capital cases move in more-or-less routine fashion through the legal system. Yet even Florida experienced a shakedown period that lasted seven years and during which half of its death-penalty cases were reversed. Florida passed its death-penalty law in 1972 and did not execute its first prisoner until 1979 (see box).

Delays and accusations of foot-dragging on capital punishment cases are not unique to California. In South Dakota, for instance, the lower courts seem to have avoided the issue by simply not imposing a death penalty despite the existence, since 1978, of a death-penalty law. According to South Dakota Assistant Attorney General Clair Ledbetter, the courts seem satisfied with issuing life-without-parole sentences rather than imposing the death penalty.

In Illinois, according to Assistant Attorney General Michael Luke, delays in implementing the penalty were exacerbated when a majority of the Illinois Supreme Court went from pro- to anti-death penalty.

Conservative Utah may be farther from its next execution than many other states. The state that put Gary Gilmore to death in 1977 now has the most stringent death-penalty tests in the nation, according to Earl Dorius, assistant Utah attorney general. Not only must

DEATH PENALTY STATES

Year	State	First	Total
1972	Florida	1979	15
1973	Arkansas	None	
	Georgia	1983	6
	Nebraska	None	
	Texas	1982	12
	Utah	1977	1
1974	Arizona	None	
1975	Alabama	1983	2
1976	Indiana	1981	2
	Louisiana	1983	7
	Mississippi	1983	1
	Oklahoma	None	
1977	**California**	**None**	
	Delaware	None	
	Idaho	None	
	Illinois	None	
	Missouri	None	
	Montana	None	
	Nevada	1979	2
	N. Hampshire	None	
	N. Carolina	1984	2
	S. Carolina	1985	2
	Tennessee	None	
	Virginia	1982	4
	Washington	None	
	Wyoming	None	
1978	Maryland	None	
	Oregon	None	
	S. Dakota	None	
1979	Colorado	None	
	Massachusetts	None	
	New Mexico	None	
	Vermont	None	
1980	Connecticut	None	
	Pennsylvania	None	
1981	Ohio	None	
1982	New Jersey	None	
1984	New York	None	

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"Reversed" does not mean "released"

The following prisoners have had their death sentences reversed by the California Supreme Court. None of the 55 is free, however; all are still behind bars (or dead). Here is a list of the 55, along with their current residences:

SAN QUENTIN

Alcala, Rodney James
Anderson, Stephen Wayne
Arcega, Vincent Madrigal
Armendariz, Joseph
Balderas, David
Bigelow, Jerry Douglas
Boyd, Juan Anthony
Brown, Albert Greenwood Jr.
Burgener, Michael Ray
Chadd, Billy Lee
Croy, Patrick
Davenport, John Galen
Deere, Ronald Lee
Easley, Elbert
Fields, Stevie Lamar
Frank, Theodore Francis
Frierson, Lavelle
Fuentes, Jose
Guerra, Danny Montana
Hamilton, Bernard Lee
Hamilton, Billy Ray
Harris, Robert Alton
Haskett, Randy
Holt, Steven Vincent
Jackson, Earl Lloyd
Lanphear, Ronald
Leach, Michael
Luckey, Darnell
Massie, Robert Lee
Mattson, Michael
McDonald, Eddie
Monteil, Richard
Murtishaw, David Leslie
Philipps, Richard
Ramos, Marcellino
Ratliff, James Monroe
Robertson, Anderson Edward
Silbertson, Steven
Stankewitz, Douglas Ray
Stankewitz, Laird Gene
Thompson, Maurice Seton
Turner, Richard Dean
Velasquez, Nick Roman
Walker, Marvin Pete Jr.
Whitt, Charles

OTHERS

Hayes, John Westley (Tehachapi)
Hogan, Carl David (Tehachapi)
Chavez, Raymond Rudy (Vacaville)
Green, Charles Alan (Vacaville)
Mroczko, Richard John (Soledad)
Gzikowski, John (Tracy)
Harris, Lee Edward (Kansas)
Mozingo, Ronny William (Sacramento Jail)
Memro, Harold Ray (Los Angeles Jail)
Mariney, Joseph (deceased)

Utah jurors consider aggravating and mitigating circumstances, said Dorius, but must also agree that the death penalty itself is "appropriate beyond a reasonable doubt."

The backlog of convictions and death sentences has resulted in ever-growing populations on death rows across the country. In California there are 161 current residents. Missouri, Illinois and Oklahoma share another 183 inmates on death row. Nationwide, 1600 prisoners wait on death rows, and the trend seems to be to keep them there rather than put them to death. In 1985, for instance, there were 18 executions nationally against 323 death judgements entered by judges and juries.

The California Supreme Court has issued decisions in 57 death-penalty cases. Of those, 54 have been reversed and three affirmed. Even the three affirmations are tied up in the appeals process on other than death-penalty issues.

The process

Death-penalty trials are complex and thus inherently fraught with delay. For instance, the jury in a capital case must make three distinct findings: that the defendant is guilty of pre-meditated, first-degree murder; that "special circumstances" are involved in the case (the murder took place during commission of a robbery or kidnapping, there was more than one victim, the victim was a law-enforcement officer, it was murder-for-hire); and for the death penalty rather than life-without-parole.

The standard of law applied in such cases also tends to be more complex than in other criminal matters. When applying the death penalty, for example, a juror is required to weigh "aggravating and mitigating" circumstances — did the defendant mutilate or torture his or her victim, have a prior conviction for murder, show any remorse for his or her act, suffer emotional or mental illness, suffer torment at the hands of the victim, murder while drunk?

As a result, transcripts tend to be long, with 5000 pages the norm and 15,000 to 20,000-page transcripts common. Death-penalty cases are automatically appealed to the state Supreme Court.

Once at the Court, a justice is chosen to compile a "conference memorandum" summarizing the facts and issues of law. Most of that preparation is done by legal clerks. Oral arguments are then heard, after which justices confer and take a tentative vote. Opinions and dissents are written, edited, circulated, often reedited and then issued.

In death-penalty cases, this procedure can take up to five years, with four and a half years the average. The chief justice is required to explain delays that last more than 150 days.

The Court has affirmed three death sentences thus far, although affirmation does not necessarily exhaust the appellate process. A defendant may then appeal his conviction and sentence to the federal court system. Even if the U.S. Supreme Court denies the appeal, a defendant may again appeal to the state Supreme Court on what are called writs of *habeaus corpus*. The defendant is allowed to do this because his first, direct appeal to the Court was limited to issues discussed at his trial. *Habeas corpus* petitions, on the other hand, are open to almost any issue. A common one is "ineffectual counsel." For instance, a defendant may have a long history of disturbed behavoir that his lawyer failed to point out at the trial. If the Court grants the petition, the lawyer must then prove his client's past mental record would not be a mitigating circumstance.

Because each petition deals with but one circumstance, the potential exists for an endless stream of petitions filed with the Court. Since the Court may accept or reject these petitions, defendants can string out the delay for as long as the Court is willing to entertain the petitions.

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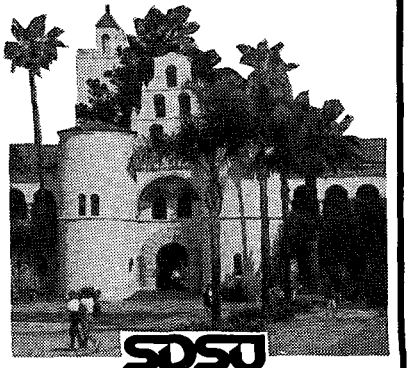

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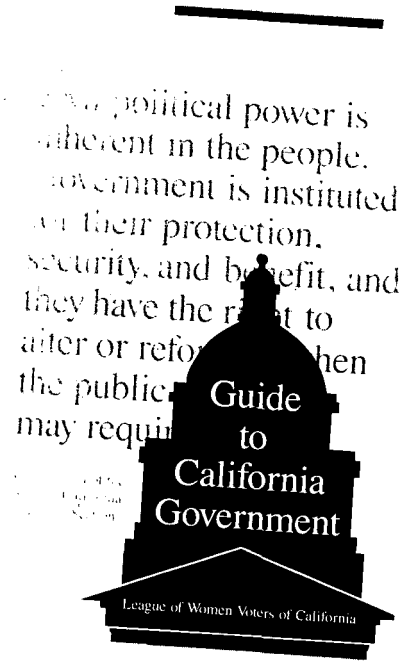

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Anti-Bird fervor has little effect on lower-court races

By CHARLES PRICE
and CHARLES BELL

Just as California's flood waters finally receded this past spring, so the "law and order," anti-court movement seems to have receded as well. Out of hundreds of local judges running for reelection this past June, only nine superior court and 18 municipal court judges were challenged, and only three incumbents lost. Not since 1972 have so few judges been challenged (see box).

Ironically, perhaps, the perception of Chief Justice Rose Bird's imminent defeat has taken the steam out of the "hang the judges" lynch-mob mood so prevalent during the late 1970s and early '80s. In a very real sense, Bird may serve as a convenient lightning rod for existing anti-judicial sentiment.

Unlike Supreme Court justices, who are either approved or rejected by a simple "yes" or "no" vote, superior and municipal judges can be challenged by real opponents. Thus, voters this past June had an opportunity not only to reject nine superior court and 18 municipal court judges but to select their successors as well.

Only one superior court judge was defeated — Judge Rex Cranmer in San Bernardino County. Two of the 18 municipal judges were also defeated and one forced into a November run-off. In short, incumbent trial court judges batted .851 in the June primaries.

Historically, the few incumbent municipal or superior court judges who must run for reelection are challenged or defeated primarily for one of five reasons: personal scandal, an unpopular decision, perceived weakness on "law and order," ethnicity and sex.

Only a few judges have achieved enough notoriety from personal scandal to become vulnerable to challenge. For example, Sacramento Superior Court Judge Benjamin Diaz' highly publicized "no contest" misdemeanor conviction for soliciting a prostitute in November 1984 resulted in massive negative publicity. Though placed on probation, Diaz remained on the bench and planned to run for reelection in 1986. He reluctantly changed his mind when faced

Charles Price is on the faculty at California State University, Chico. Charles Bell is retired from the California State University, Fullerton, and teaches part time at the University of California, Davis.

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with opposition from prosecutor Kenneth Peterson.

Few judges lose reelection because of a particular decision, but it has happened. Topping the short list of unpopular trial results which have led to opposition and defeat would certainly be Los Angeles Superior Court Judge Alfred Gitelson's famous school desegregation decision which was followed by voter rejection in 1970. Close behind would be the defeat of a San Francisco superior court judge following an unpopular lenient sentence in a widely publicized rape case.

Law and Order

In the mid 1970s a new pattern of judicial elections began to crystallize around the issue of "law and order." The number of incumbent superior court judges challenged for reelection steadily increased, peaking in 1978 with 28 challenges. Challengers to incumbent judges, most frequently local district attorneys, campaigned on the theme that they would be tougher on criminals and more concerned with victims' rights than was the incumbent judge.

Led by ultra-conservative Republican politicians such as state Senator H. L. Richardson of Glendora; fueled by some of Governor Jerry Brown's "unorthodox" judicial appointments, riding the crest of the national "law and order" issue, and financed in substantial part by direct-mail contributions from concerned citizens, opponents of so-called lenient judges brought the courts under heavy attack. In 1978, the peak year for judge-bashing, Chief Justice Bird won reconfirmation by an historically narrow 52 percent of the vote while Associate Justice Wiley W. Manuel got an unusually low 62 percent "yes" vote. The 25 District Courts of Appeal justices on the ballot averaged a 31 percent "no" vote. Seven of the 28 challenged superior court judges were defeated.

The courts were in turmoil, and although liberal judges were particularly vulnerable, all challenged judges were subject to an almost blind criticism and attack. Conservative Supreme Court Justice Frank Richardson got a 27 percent "no" vote in 1978 and four years later a 24 percent "no" vote.

Ethnicity and, more recently, sex appear to have had an impact, too. Only one incumbent superior court judge was defeated in 1982 — Los Angeles Judge Kenneth Byung-Cho Chang. Two others who narrowly averted defeat that year were Judges Ernest Hiroshige and Ferdinand Fernandez. This year, in spite of the relatively few incumbent women judges, four were challenged and one, Betty Elias (Orange County) forced into a November runoff.

Hispanic judges appear to suffer from a significant ethnic bias. In 1978 District Court Justice Cruz Reynoso received an unprecedented 41 percent "no" vote — higher than that received by any other district court justice that year or to date. As a Supreme Court justice his 1984 "no" vote of 47.6 percent fell only .7 percent behind Bird's "no" vote.

1986 elections

If one were judicially ambitious, 1986 appeared, on the surface at least, to have been the year to challenge an incumbent judge. The embattled and very unpopular chief justice was on the November ballot and the center of controversy throughout the year. Indeed, support or opposition to Bird became, in itself, an issue in other elections. And the "deep pockets" initiative — Proposition 51 on the June ballot — was clearly tapping strong anti-lawyer/court attitudes among the electorate. Why then did so few candidates file against incumbent trial judges?

First, it is very difficult to defeat an incumbent judge. At the height of the 1978 anti-court, anti-Bird campaign, only seven (25 percent) of the 28 challenged superior court judges were defeated, four of those in Orange County. Since then there has been a steady decline in the number of challenges.

There is also a strong bias within most segments of the legal community against challenging incumbent judges. Concerned by the savage attacks on the California judiciary, many county bar associations now prepare public evaluations of incumbent judges and judicial candidates. According to David Price, former president of the Orange County Bar Association, attorneys there have formed a "solidarity committee" to provide campaign money and other help for bar-endorsed candidates. Moreover, private attorneys have a very poor success rate in challenging incumbents. If they lose, they face the prospect of appearing in a courtroom run by their recent opponent.

Another reason for so few superior court judicial challenges is that these elections are county-wide — making them prohibitively expensive in large urban counties. As Rebecca Kuzins noted in a recent edition of the *Los Angeles Daily Journal*, the most frequently cited explanation of why so few judges are challenged is that campaigning in Los Angeles County has become too expensive for all but the wealthiest candidates. For instance, a statement listing one's judicial qualifications in the

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Los Angeles County Voters Pamphlet currently costs $52,000. Since costs for a direct mailing to even one-third of the county's registered voters could easily exceed $250,000, candidates for the superior court are forced to use the free media — hardly a "judicial" vehicle.

CHALLENGED SUPERIOR COURT JUDGES

1972-1986

Year	Number
1972	9
1974	11
1976	14
1978	28
1980	19
1982	12
1984	11
1986	9

This year, for the first time since 1964, not one superior court judge was challenged in Los Angeles County. The few 1986 challenges to superior court incumbents occurred mainly in the state's smaller counties — Butte, Madera, Shasta, and Yolo in the north; Mono, San Bernardino and Orange in the south.

Finally, incumbent judges have become more politically sophisticated. They know more about how to hold their jobs and how to discourage potential opposition than did their predecessors. They no longer simply hire a political consultant or campaign firm after being challenged but prepare well in advance. For example, San Mateo Superior Court Judge William Lanam has prepared a political handbook for judges discussing the "dos" and "don'ts" of judicial campaigns.

Lanam advises judges to "keep in touch with the community, maintain contact with social and service organizations and attend bar functions and social events which can heighten the judge's image in the legal community." A particularly intriguing suggestion is to perform lots of weddings.

"You have a spellbound audience, everyone is in a good mood and if you perform an enjoyable service you can be sure everyone will go home remembering to vote for you."

Lanam also states that it is ethical for judges to wear their black robes for campaign pictures but suggests judges limit contributions from community lawyers to $50, $250, or $500 maximum — to avoid any appearance of impropriety. The tactics dispensed by Lanam are election basics familiar to campaign professionals but, until recently, unfamiliar to judges steeped in California's non-partisan, non-political judicial tradition.

Rose Bird

Chief Justice Rose Bird was seldom an issue in local trial court elections this year as only a few challengers even attempted to use the "law and order" or "soft on crime" issues against incumbents. None succeeded. Shasta and Madera County Superior Court races hinged on "law and order" issues, but in Yolo County, incumbent Judge James L. Stevens was criticized by his challenger for being *too tough* on defendants. In other races the issue simply didn't appear.

Attempts to link an incumbent judge to Bird did not lead to election success. In Sacramento County, Municipal Court Judge Alice Lytle (Black and female) defeated her H. L. Richardson-supported opponent. Similarly, Municipal Court Judge Ron Robie, tagged as "pro-Bird," defeated his prosecutor-opponent for an open seat on the superior court. In Orange County, Municipal Court Judge Davis Brickner beat back a challenge by a deputy district attorney who had criticized Brickner as "pro-Bird."

Clearly, other issues and personalities played a more important role in this June's judicial elections. In Butte County attorney Maxim Bach's campaign against Judge Rodger Gilbert seemed largely an expansion of strong personal differences stemming from earlier courtroom battles between the two. Bach had also previously filed two lawsuits against Gilbert.

In Mono County the race between incumbent Edward Denton and his challenger, Municipal Court Judge F. William Murano, was a classic "old-timers against the newcomers." Establishment ranching interests in the northern end of the county supported Denton against challenger Murano who represented the rapidly growing new, south-county subdivisions at Mammoth Lake.

Further south, in Orange County, the scene of an historic defeat of four superior court judges in 1978 on various "law and order" themes, was, this year, enlightened by religious fervor. Challenger James Wilkoski asserted that he was "running on a campaign to acknowledge more of God's ways and less of our ways." This more elevated campaign lost.

San Bernardino had the largest number of contested superior court elections — three incumbents were challenged and a fourth seat was open. San Bernardino County, which has long had a reputation for supporting "law and order" candidates, led all other counties in its support for the 1978 Briggs Death Penalty Initiative (83 percent "yes"). But even in San Bernardino two of three incumbent judges were reelected, and "law and order" issues were absent.

According to Harvey Fite, *San Bernardino Sun* political editor, there was no systematic pattern in the county's judicial races. One candidate filed for what he assumed would be an "open" race only to discover that Governor Deukmejian would fill the seat. In another race, controversial Municipal Court Judge Carol Koppel challenged an incumbent superior court judge rather than face formidable oppostion to reelection for her own seat. She lost. In the third election, attorney Joseph Johnson waged the only successful challenge to an incumbent superior court judge in the state. Johnson's issue was that since incumbent Judge Rex Cranmer would soon retire the voters ought to elect Johnson rather than let the governor fill the seat — perhaps with someone from "outside" the county.

Incumbent local judges seem to have weathered the storm. The high cost of judicial campaigns, incumbents' low political visibility, peer group pressure within the legal community, judges' increased campaign skills, and the apparent decline in the "law and order" issue have all combined to restore most local trial court judges to their traditionally obscure and secure job tenure.

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ROSE BIRD AND THE MEDIA

Stalking the wily chief justice

By RIVIAN TAYLOR and JAMES RICHARDSON

"The media tries to twist everything to make controversy."
— Rose Bird,
1985 interview, San Francisco Focus Magazine.

In April Lorie Hearn, a reporter for *The San Diego Union*, was in Australia as one of two Californians covering a visit by Chief Justice Rose Elizabeth Bird. To Hearn's dismay, Bird went almost everywhere with the *other* reporter — Frank Clifford of the *Los Angeles Times*. Hearn was relegated mostly to public events. Before leaving Los Angeles, Clifford had struck a deal with Bird that amounted to exclusive coverage of the trip. Clifford shared meals, rode in her car and even went to the zoo with California's chief justice, while Hearn was excluded from receptions and kept out of a radio station where Bird was to be interviewed.

Once Clifford discovered another California reporter was there, he told Bird that he would understand if Hearn got the same access. But Bird felt she had a deal with Clifford so stuck with it. "I don't know why the arrangement like the

James Richardson is Sacramento correspondent for the Riverside Press-Enterprise. *Rivian Taylor, a lawyer, is a consultant to the Assembly Public Safety Committee and a former legal reporter for the* San Diego Union.

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one I had could not be worked out with Lorie Hearn," Clifford said. "Whether the prospect of two people shadowing her was more than she could take, I don't know."

Hearn, of course, was incredulous at the treatment. "There were only two of us in Australia," she said. "My newspaper had given me the time and had spent the money to send me over there, albeit at the last minute. I found it remarkable she did not want to take advantage of the fact that I was there." Near the end of the trip, she finally had a 15-minute interview with Bird.

The Australia episode is typical of Bird's erratic attitude toward the press. For the first eight years of her tenure, she spurned nearly all contact with the media. Now that she appears to be on the verge of losing her post, she complains loudly that the press has not adequately explained her point of view.

The Australia episode also shows how Bird is cultivating the *Los Angeles Times* which nearly blew her out of office in 1978 with an election-day story alleging the Court had held up a controversial decision until after the election. Whether by coincidence or by design, *Times* reporters have enjoyed access to Bird unequalled by any other news organization since November 1985. *Times* reporter Clifford has interviewed her three times, not including his Australia sojourn, and plans to use the material in a lengthy profile for the *Times* this fall. Other *Times* reporters have enjoyed quick access to the chief justice's chambers.

Bird's administrative assistant, Stephen Buehl, has offered the official explanation. He said the chief justice did not want a big press corps following her in Australia — even a press corps of two. "We simply could not have had a huge press entourage following this," he said. "We felt, in fairness to the long-standing arrangement with the *Times*, we could not work it out." Buehl said the *Times* arranged coverage ahead of time; *The Union* gave the chief justice only one day's notice it was sending a reporter to Australia.

Bird's treatment of Hearn is not unusual. She wants to deal with the press on her own terms and has shut out reporters with other ideas or who she believes have written unfriendly stories in the past. She prefers one-on-one interviews and disdains press conferences or even dealing with a handful of reporters at once. These attitudes have produced a relationship of fits and starts. Until this year, she spent years cloistered in her chambers avoiding the press. Then, with a confirmation election staring her in the face, she granted more interviews to more reporters than most other elected officials; certainly more than has Governor George Deukmejian. Her campaign press secretary, Steve Glazer, says she has given 40 interviews since January, and he expects the pace to quicken.

"I think she does an excellent job of communicating her answers to the press," Glazer said. "I don't see any reason for her to do anything different."

Glazer argues that Bird understands the press and its needs. For example, under Bird, as the chief administrative officer of the court, television and still cameras were, for the first time, allowed into courtrooms, including the Supreme Court itself. The advisory commission that recommended the change included journalists, the first time the working press had been included on a judicial advisory commission.

Awkwardness

Still, the hallmark of her press relations has been a certain awkwardness. Often she has not answered an interviewer's questions so much as used them as a springboard for long-winded dissertations on the institution of the Court and inadequacies of the electoral process for judges. She has complained that coverage of her and the Court has been superficial; that, for instance, the media has concentrated on her new flashy hair style. News coverage, she said in an October 1985 speech, is "a barrage of intrusive trivialities . . . substituted for any discussion of ideas about matters of public concern."

She added in a speech to television and radio broadcasters in July that Court justices cannot use "slick public-relations gimmicks and entertaining news hooks. We have no way of pandering to the public or pampering the press."

The chief justice has some horror stories to back up her thesis. For example, the August 20, 1985, edition of the *San Francisco Chronicle* published a page one story headlined, "Rose Bird Chides Meat-Eaters." The *Chronicle* reported that Bird, in an interview with the *Vegetarian Times*, had criticized her colleagues for eating meat rather than her vegetarian fare that she said made her a more pacific person.

Moreover, many newspapers and television stations in the state have displayed before-and-after pictures of her hair styles, comparisons she might have expected after mailing out new publicity pictures. And she is hardly the first public official singled out for such treatment. Newspapers have also displayed before-and-after pictures of Alan Cranston's gray-to-red, and back-to-gray hair changes with nary a complaint from Cranston.

Bird is not alone in her criticism of press coverage. Many journalists will concede coverage of the complex court system is not strong with most newspapers and is even worse on television. UC Berkeley journalism professor and media critic Ben Bagdikian, in a speech last year, said Bird had been "placed in a category not requiring standard journalistic fairness and balance . . . ."

"Up until very recently, Rose Bird was reported on as a woman, a controversial political person, but almost never as a judge," he said in an interview.

But the complaints from Bird's camp have often sounded petty. For example, Glazer complains that Cranston's before-

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and-after pictures are smaller than Bird's. More fundamentally, Bird's complaints ignore the long-standing grievances of those who regularly cover the Court. They complained, until recently, that she was more willing to grant interviews to off-beat publications like *Vegetarian Times* than to Court regulars. Relations with those reporters deteriorated to the point last year where the *Chronicle*'s Susan Milstein, who had been told for a year that Bird was too busy to talk with her, started routinely inserting a paragraph into her stories that Bird refused to give interviews to reporters who regularly cover the Court. Other reporters followed suit.

Bird's complaints about her press coverage tend to belittle serious efforts by many of the state's major newspapers and some television stations whose reporters have subjected Bird's opponents to often-heated questioning about the accuracy of their claims. Moreover, several newspapers have devoted considerable space to extensive examinations of the Court, notably the *San Francisco Examiner* and *Sacramento Bee* which each published a pull-out section on the Bird Court.

Bird's accessiblity has markedly increased in 1986 as she has embarked on a back-breaking grind of interviews. "The chief justice is only trying to respond to requests," Buehl said. "She does not give interviews to curry favor with the press."

The *Times*, however, has gotten more attention than any other organization — a change even for the *Times*. Dan Morain, until recently the paper's Supreme Court reporter, said his first year and a half on the beat was an exercise in frustration, with almost no access to Bird. He did a lengthy series on the death penalty in August 1985, but Bird did not grant him an interview. Since November, Morain said he has been able to see Bird almost at will. "I never have a great deal of trouble getting in to see her," Morain said. "The *Times* is the biggest paper and the most influential. It would make sense for her to talk with us. And we are certainly not going to turn our backs."

Buehl and Glazer said the chief justice is not going out of her way to favor the *Times*. But other newspapers have had to queue up for interviews, submitting written requests and then waiting weeks or months or years for an interview. The *San Diego Union* has had a standing, written request for an interview since August 1981; not until March 20th of this year was the paper granted one. The *California Journal* in March requested an election-year interview with the chief justice, but was told Bird had "no time" for the session before publication of this issue. During the past two years, the *Journal* has made at least four requests for interviews. None of those was granted, either.

Others report, however, they have had little trouble reaching Bird in 1986. Philip Trounstine, political editor for the *San Jose Mercury News*, is one of the few who has gotten her on the telephone. He said he had a productive dialogue with her for 45 minutes. Larry Liebert, political writer with the *Chronicle*, recently conducted a two-hour interview with her.

A bad start

The relationship between Chief Justice Rose Bird and the press started off on the rocks. Governor Jerry Brown appointed her on a Saturday (February 12, 1977), to the annoyance of the Sacramento press corps. Further, she attempted to give individual interviews back-to-back that day rather than hold a press conference. Those who got interviews found her friendly, though judiciously vague about what she intented to do as chief. But those left out were furious. That afternoon the governor and a half-dozen Capitol reporters retreated to a Chinese restaurant for a two-hour

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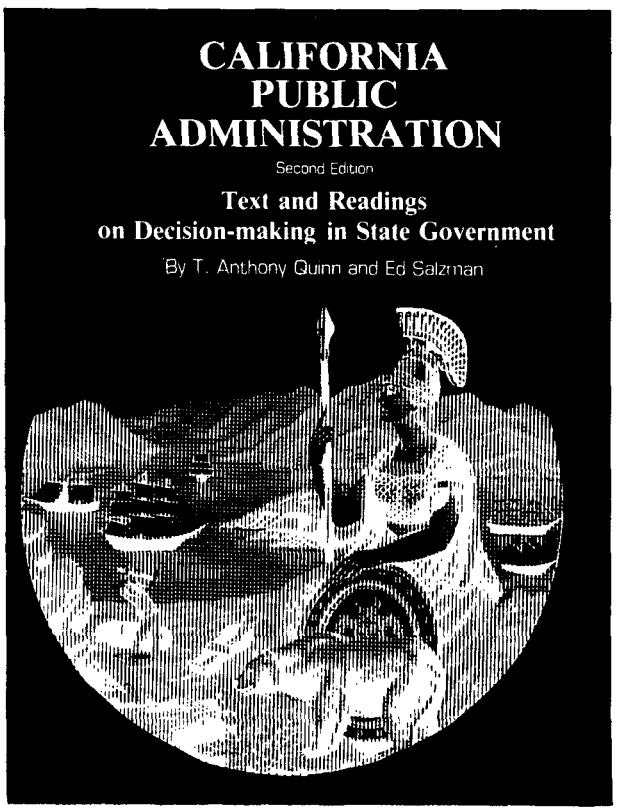

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grievance session.

The tone of her press relations was set when she was the state's agriculture secretary. Buehl remembers with pride that she had no public-information officer. Those close to her say her attitude has generally been that if she worked hard, did a good job, the press would notice. She saw no need to court the press.

Once ensconsced in San Francisco as chief justice, Bird had trouble developing rapport with beat reporters. From the press's point of view, the contrast with her predecessor could not have been more stark. Where the affable Chief Justice Donald Wright had regularly taken phone calls from the journalists, Bird immediately cut off instant accessibility. She said she did not have time. The number of press calls for Bird, as the Court's first woman justice, dwarfed the number that Wright received. Even so the number of reporters regularly assigned to the Court — a half-dozen, or so — was not overwhelming.

Beat reporters soon went elsewhere for their news tips. Bird's enemies, for example, were not media shy. Unflattering stories, many of them petty, began to appear, including one detailing how Bird changed the locks on her office as symbolic of her closed- door style. Bird supporters later said that if the reporters had bothered to ask the right people they would have found out that the locks were changed because an appellate court justice unlocked her office door one Saturday night while Bird was working.

"An image was created and it was reported over and over again without going to the other side," said Betty Medgser, head of the journalism department at San Francisco State University who wrote the 1983 book "Framed: The New Right Attack on Chief Justice Rose Bird and the Courts."

Some have said Bird invited the unflattering prose. "If she only understood the press better and made a greater effort to understand us and the way we work, she would have been portrayed in a more favorable light," said Philip Carrizosa of *The Los Angeles Daily Journal*, the state's major newspaper for lawyers.

Medsger has contended that Bird's failure to take phone calls was no excuse for one-sided stories. "Good reporters do not simply turn against the source who doesn't personally take their calls; they develop other sources close to the wanted source," Medsger wrote in "Framed." She also questioned the fairness of "early and persistent" descriptions of Bird as "inaccessible."

More fundamentally, Medsger questioned whether it was reasonable to expect a chief justice to be available to the press. Traditionally, justices speak through their written opinions. They do not hold press conferences. Other justices besides Bird have not been expected to have "press relations." After all, she argued, U.S. Chief Justice Warren Burger rarely talks to the press.

If Rose Bird got off to a rocky start her first year, things worsened during her second year. The *Times* story on the day of her first election confirmation alleged the Court majority was holding up release of a controversial opinion, *People vs. Tanner*, the "use a gun, to to jail" law, to benefit Bird's election chances. In the wake of those allegations, the Court was then subjected to protracted hearings before the Council on Judicial Performance at Bird's own request. The council ultimately cleared the Court of impropriety. Medgser says Bird got a "raw deal" from the press. "That year- long coverage — from November 1978 to November 1979 — created an atmosphere that contributed (to) and made it possible to start recall movements," Medgser said.

Sacramento Bee legal-affairs reporter Claire Cooper points out, "You should not discount the possibility of shell shock. Ever since she has been appointed she has been treated as some kind of freak show, not as a chief justice. It's very obvious she distrusts the press. Who can blame her?"

Bird granted what was then a rare interview, in May 1979, to Associated Press reporters Bob Egelko and Bernard Hurwitz during which she discussed, among other things, how she had learned to live with cancer. The shell shock appeared to further wear off in December 1981 when the chief justice began granting interviews to selected newspapers.

In December 1982 Bird was the featured interview in *PSA Magazine* and shortly thereafter the chief justice gave an interview to *Air Cal Magazine*. The question-and-answer format of the flight magazines appealed to Bird, Beuhl said at the time, because the chief justice could be assured she would not be quoted out of context or have her remarks edited. Buehl in the last year has routinely asked reporters to publish their interviews in a similar format although few have done so.

Bird has on occasion been personable and gracious to the reporters who covered her. Two years ago, when Hurwitz retired from AP, Bird was the only member of the Court to show up at his pressroom going-away party. She even prepared a poem for the occasion. Others have pleasant memories as well. The *Oakland Tribune*'s Carol Benfell, who was then working for *The Los Angeles Daily Journal*, said her first memory of Bird was as a rookie reporter on her first newspaper job in 1977. Benfell dropped her notebook at a crowded function. The chief justice picked it up. "My first impression was she was a . . . very charming woman that everyone is picking on," Benfell said.

A few years ago Bird began inviting new reporters on the Supreme Court beat into her chambers for informal chats. Relations improved. Practical accommodations soon followed. For example, Pam MacLean of United Press International asked for, among other things, a special docket so reporters could keep track of filings in a controversial case. The chief justice promptly went along.

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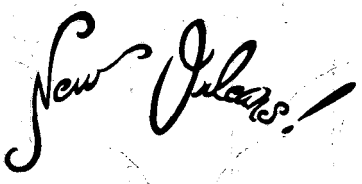

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"It was improving," Carrizosa said. "But when things started heating up and the attacks began again, she started going back to the old, closed-door, tight-lipped mentality. I guess it's like a cycle."

The cycle includes some snideness from Bird. Susan Milstein, whose by-line was on the *Chronicle*'s off-based meat-eating story, said she called Bird to tell her how bad she felt about the headline and editing. Bird responded that she appreciated Milstein's candor. So Milstein broached the subject of an interview. "(Bird) said, 'Maybe, if you're ever in an editorial position at the *Chronicle*.'"

The November interviews

Bird began making up for lost time by granting interviews to eight reporters on November 23, 1985. It backfired clumsily. In one stroke, she came off as shrill by labeling her critics "bully boys," and she alienated those news organizations not granted interviews. Further, she complicated relations with several of the reporters who were included by lecturing and sometimes shouting at them.

Rather than engaging in a dialogue with her interviewers, Bird used identical phrases to repeat the same message: If her opponents succeeded, the California Supreme Court could wind up full of little "Eddie Meeses," a rather indelicate reference to the United States attorney general who had not publicly involved himself in the anti-Bird campaign.

First at bat was the *Times*' Morain. He said the interview was "grueling" but not combative. "She knew what she wanted to say. It did not always relate to the questions."

Tupper Hull of the *Los Angeles Herald-Examiner* followed. His interview went smoothly. He said Bird was friendly and engaging. But Hull does not regularly cover the Court. He was told by an editor only the afternoon before to be in San Francisco the next day to interview Bird, with less than 24 hours notice to prepare. "I don't for a minute pretend I asked her any sort of disturbing questions."

The interview following Hull's did not go as well. The AP's Egelko, who has a law degree and has covered the Supreme Court regularly for two years, said: "The biggest frustration of all was that in one hour there wasn't one minute of dialogue. She talked at me and sometimes shouted at me for the better part of an hour. I came out of there shaken."

"You ask her a question and she doesn't answer it or she gives you a pat answer," said Egelko. "I was left with the feeling I might as well not have bothered. I left with no insights. There is a point at which an interview is of no assistance."

Another of the eight, Carrizosa, said "When I would ask her a question, rather than answer it, she would sidestep it and get back to her message. It didn't matter what questions I was going to ask."

Carrizosa also has a law degree and has covered the Supreme Court for six years. He tried to question Bird about her procedural court reforms, a subject of specific interest to his readers — lawyers. "She made an off-hand remark that I wouldn't be interested in that because it wasn't sexy," said Carrizosa. "I resented the implication that I wouldn't be interested."

The *Chronicle*'s Milstein, another of the regular Court reporters granted an interview that day, had an equally stormy session. Milstein, who worked for a national legal magazine before joining the *Chronicle*, said Bird "interrupted me constantly. At one point, she started screaming at me because she didn't like my questions. I had been a reporter for seven years and no one had ever treated me like that. I thought it was totally undeserved. I had a completely open mind about her when I came in." Milstein recalled that Bird repeatedly made references to what she felt was the media's preoccupation with her hairstyle. "I said, 'Chief Justice, I've never written a word about your hair.' That didn't seem to placate her."

In addition to Hull, Morain, Egelko, Carrizosa and Milstein, reporters from United Press International, the *San Francisco Examiner* and the *Sacramento Bee* were given interviews that day. The day before, the *San Jose Mercury News* caught wind of the impending interviews but no degree of argument could get it on the annointed list.

The Bird interviews appeared on a Saturday, giving news organizations left out no shot at an interview. By Monday, Bird's staff was taking the heat. The explanation offered by Buehl was that those invited were the regular Court reporters. But the *Oakland Tribune*, which regularly covers the Court, was not included while the *Herald-Examiner*, which does not cover the Court on a regular basis, was included. The further explanation was that the *Tribune* did not have a written request for an interview on file; the *Herald-Examiner* did. Bird's staff said it felt compelled to invite the *Herald-Examiner* because it was the *Times*' major competitor — a glaring display of ignorance concerning other large newspapers in Southern California.

Bird's staff essentially dismissed the complaints as the typical whining of the press during an election year. But in succeeding months, Bird granted interviews to those left out. Of more lasting significance were her comments during the November interview. "Bully Boys" and "Eddie Meese" only seemed to reinforce the public perception of Bird as strident. Bird soon expressed regret that her "colorful language" had obscured the substance of her message. "I should have phrased it more precisely and less personally," she observed. Although she implied that her inartful language was somehow spontaneous, she had repeated the same phrase eight times to eight reporters on the same day.

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Fiscal Hieroglyphics

By ED GOLDMAN

About a decade ago, I stood before the Sacramento City Council and answered questions — for nearly 20 minutes — about a proposed project that was to cost the city $147: a citywide questionnaire to be printed in-house and distributed along with city utility bills.

The item that preceded me on this particular council agenda concerned the expenditure of several million dollars for a public-works project. That matter passed without so much as a murmur of discussion, even though the vote wasn't unanimous.

After exhaustively defending my $147 project (a brainstorm of then-Councilman, now-Assemblyman Lloyd Connelly), the entire situation was put into perspective for the audience by then-Mayor (now-Assemblyman) Phil Isenberg. "This is what we call the Inverted Law of Budget Discussions," Isenberg cheerfully told the assemblage. "The more money we spend, the less we're inclined to discuss it. The less we spend, the longer we're bound to be here."

Wiping the perspiration from the back of my neck, I smiled my thanks for Isenberg's grace note. My voice was hoarse; butterflies played racquetball somewhere between my sternum and esophagus. Yet I had stood up under some of the most rigorous questioning this side of Nuremberg and felt justifiably proud of my efforts. After all, each tax-paying home in Sacramento was about to shell out roughly three-tenths of a cent to fund a survey that would ask citizens to rate a variety of municipal services in terms of performance and importance. This isn't the sort of project, or expenditure, one embarks upon lightly.

As I sat in a staff anteroom a few moments later, so uptight I was drinking day-old black coffee to *relax*, I realized what all the commotion had been about. The public-works project carried a price tag that councilmembers could not easily relate to; my little survey, on the other hand, cost about the same as a car payment, a summertime electric bill, a VISA card balance, dinner for two in San Francisco, a round-trip flight from Sacramento to Burbank, light orthodontia or a three-piece polyester suit from Giddy Guido's Silks and Serge Shop. In short, the elected officials could *understand* $147; $15 million to reline some gutters was fiscal hieroglyphics.

Oddly, many of us seem to feel a sense of shame, or at the very least inadequacy, over our inability to comprehend the stratospheric dollar. We attend films we're told cost $30 million to produce and find ourselves commenting in awestruck tones, "Boy, when Spielberg spends $30 million, it's all right up there on the screen."

What the hell do we mean by *that*? Answer: The film was in color, had Dolby sound and wasn't out of focus and so must have been worth its cost.

Conversely, everyone would turn into an immediate critic if word were to leak out that the third Indiana Jones flick cost only $653.23 — an average California mortgage-loan payment, the cost of a decent home VCR, the price of a shared room at a teaching hospital or the bill for incorporating yourself through a reasonably priced law firm.

Since the stratospheric dollar seems to be a permanent part of the state's fiscal landscape, perhaps it is time for our elected officials and their number-crunching staffs to consider the following proposal for making the annual budget rites a tad more palpable to ordinary folk. It could also help bring the concept of government spending down somewhere beneath the earth's ozone layer.

For instance, since in any given year nobody in his or her right mind can imagine what it means to give a particular state agency $1 million more or less than it got the year before — but since all of us appreciate the difference if it shows up as a surcharge when we purchase a normal consumer item, like cigarettes, flavored mineral water or a variety of kinky entertainments — I propose that the state send out the following letter where appropriate:

"Dear Smoker/Drinker/Wild-and-Crazy Guy:

"Due to a bigger budget for the Board of Fabric Care, it will now cost you the equivilant of (19 cartons of cigarettes/5 cases of raccoon-flavored mineral water/renting the video *Stewardesses in Chains* for three additional weekends) than it did last year. We apologize for any inconvenience this may cause you, but living in this great state is be worth the extra few dollars. After all, CALIF doesn't stand for Come and Live in Florida. Sincerely, The Honorable George Deukmejian."

Conversely, what happens when a government expense actually *de*creases — something historians remind us occurred once during the Paleolithic Period, twice during the Industrial Revolution and once during a 1975 power outage at the Capitol? The average taxpayer would be sent the following:

"Dear Friend:

"Congratulations! Due to a tight fiscal policy, sound money management and the fact that an entire state agency was eliminated when a sudden tropical storm devastated its management retreat in Samoa, you will realize a tax savings of $72 per California household. Think what this means: a "free" visit from a plumber; dinner for one in San Francisco; sheepskin seatcovers for your automobile; a full weekend's worth of *Stewardesses in Chains*. Just another example of your efficient state government at work. Sincerely, George."

Ed Goldman is a freelance writer from Sacramento.

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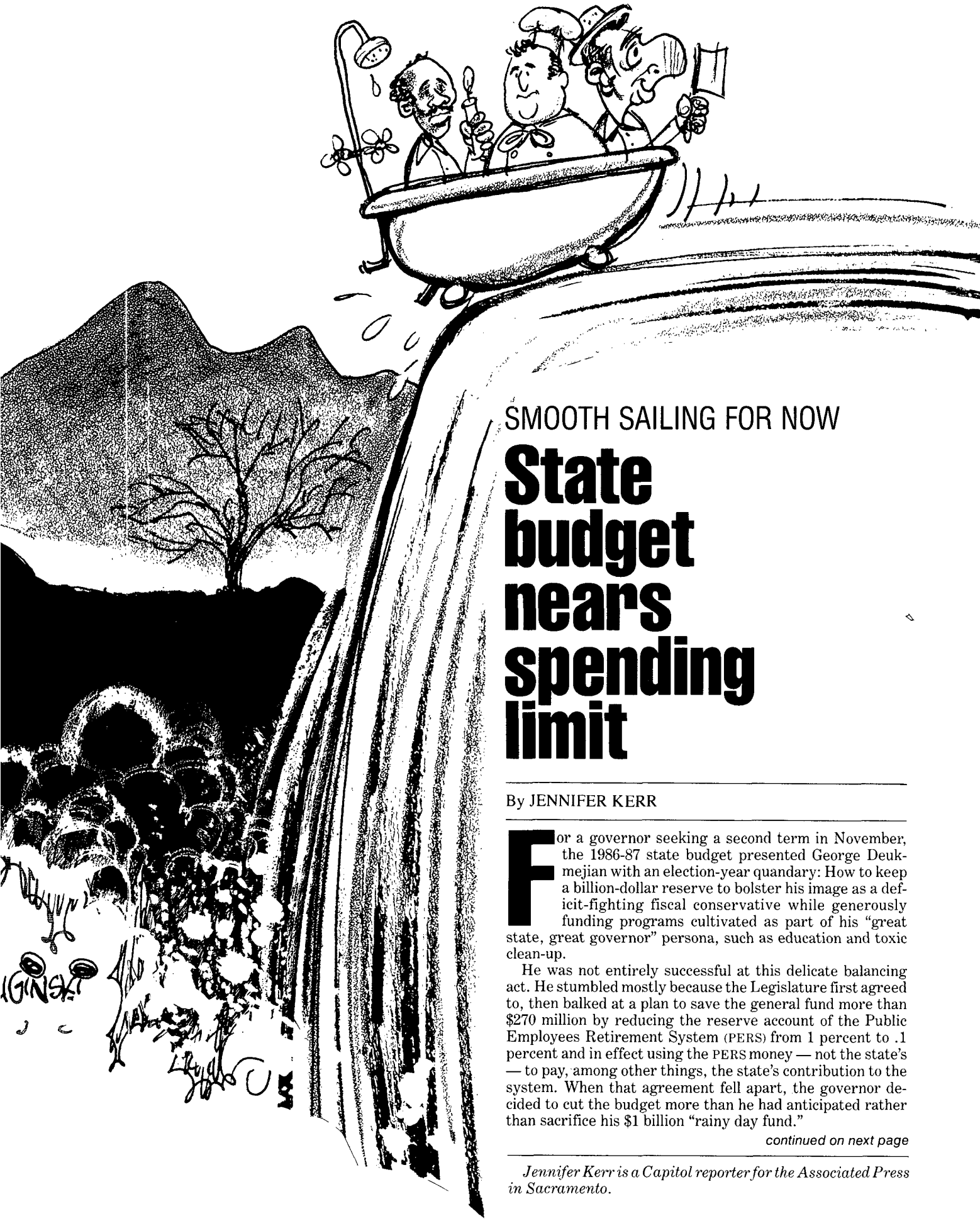

SMOOTH SAILING FOR NOW

State budget nears spending limit

By JENNIFER KERR

For a governor seeking a second term in November, the 1986-87 state budget presented George Deukmejian with an election-year quandary: How to keep a billion-dollar reserve to bolster his image as a deficit-fighting fiscal conservative while generously funding programs cultivated as part of his "great state, great governor" persona, such as education and toxic clean-up.

He was not entirely successful at this delicate balancing act. He stumbled mostly because the Legislature first agreed to, then balked at a plan to save the general fund more than $270 million by reducing the reserve account of the Public Employees Retirement System (PERS) from 1 percent to .1 percent and in effect using the PERS money — not the state's — to pay, among other things, the state's contribution to the system. When that agreement fell apart, the governor decided to cut the budget more than he had anticipated rather than sacrifice his $1 billion "rainy day fund."

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Jennifer Kerr is a Capitol reporter for the Associated Press in Sacramento.

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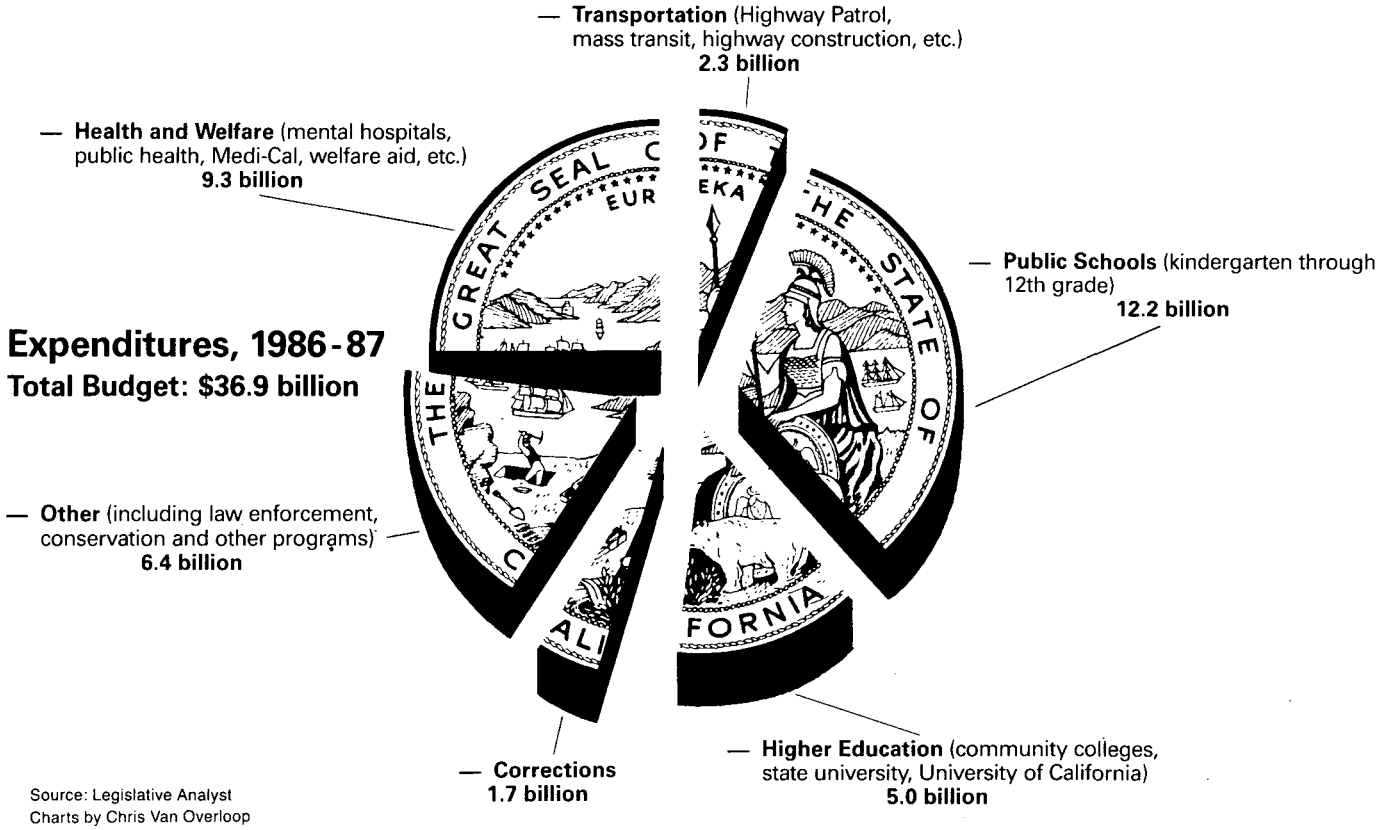
— Transportation (Highway Patrol, mass transit, highway construction, etc.)
2.3 billion
— Health and Welfare (mental hospitals, public health, Medi-Cal, welfare aid, etc.)
9.3 billion
Expenditures, 1986-87
Total Budget: $36.9 billion
— Public Schools (kindergarten through 12th grade)
12.2 billion
— Other (including law enforcement, conservation and other programs)
6.4 billion
— Corrections
1.7 billion
— Higher Education (community colleges, state university, University of California)
5.0 billion
Source: Legislative Analyst
Charts by Chris Van Overloop

The Legislature passed a $37.5 billion budget, balanced and with no tax increases, on June 12th, three days before the frequently-missed June 15th constitutional deadline. Thirteen days later, Deukmejian signed a $36.8 billion budget for the fiscal year beginning July 1st, vetoing $717 million from the Legislature's spending plan. At the same time, he said he was willing to restore some $283 million in cuts if lawmakers passed certain bills, including one to follow through with the PERS transfer. As has become his custom, he did not hold a public signing and was not available for questions. But the night before the signing, he made a television speech telling Californians about the budget in general terms.

Deukmejian got his billion-dollar reserve — but also plenty of criticism for cuts that were twice as deep as anticipated. The complaints came not only from Democratic lawmakers and the governor's November election opponent, Los Angeles Mayor Tom Bradley, but also from groups such as the education community surprised and hurt by the vetoes.

The cuts brought Deukmejian's four-year budget veto total to $3.5 billion; however, many of those cuts have been the same program increases, mainly for school and health programs, added each year by Democratic lawmakers. Democrats tend to tack money onto those programs they think will be politically embarrassing for Deukmejian to cut; the governor routinely slashes them, explaining that his original budget was generous enough. This amounts to a sort of budgetary badminton between the Legislature and the governor, to see which side will end up off-balance.

The Gann limits

Until the retirement-funds snag caused the governor to increase his blue-pencil activity, this year's budget process was relatively smooth and uncontroversial. The main reason was the interaction of the state's economy with the Gann appropriations limit (see "The Gann limits," *CJ*, March 1986).

Voters in 1979 approved Paul Gann's "Spirit of Proposition 13" initiative which set an upper limit for state spending, allowing increases each year only to reflect population and inflation growth. Revenue collected over the limit must be returned to taxpayers within two years. Because of the poor economy early this decade, the spending limit was only theoretical — until this year. The budget, since first proposed in January by Deukmejian, has been as close as $25 million to the ceiling, meaning legislators could not make the kind of spending increases they might have liked in an election year and that might have caused fights with the governor.

The Assembly and Senate budget subcommittees worked rather smoothly all spring on the $36.7 billion budget proposed by Deukmejian in January. Then came the Department of Finance's annual May revision of revenues and expenditures. This revision is necessary because, when the budget is prepared in December, Finance must estimate how many people will need state-supported services like medical care, schooling, prisons and so on during the coming year. The following May the numbers are revised to reflect more current data. The budget was increased to $37.15 billion this past May.

One item tucked into the "May revise" didn't get much initial attention. It involved cutting the reserve for deficiencies of PERS from 1 percent to .1 percent, a saving of $270 million. The PERS staff proposed the reduction but wanted to use the savings to reduce the system's unfunded liability — now estimated at between $11 billion and $12 billion. The governor, on the other hand, wanted to use the savings to pay the state's own contribution to the PERS system, thus saving the money for use elsewhere.

At the end of May the Senate routinely approved a $37.5 billion budget. On the Assembly side, however, anti-abortion lawmakers took advantage of several Democrats' absences on a Friday to add a pair of amendments — one to prohibit virtually all Medi-Cal abortion funding and another to require that all abortions be reported to state health officials. In a house almost evenly split over the volatile abortion issue,

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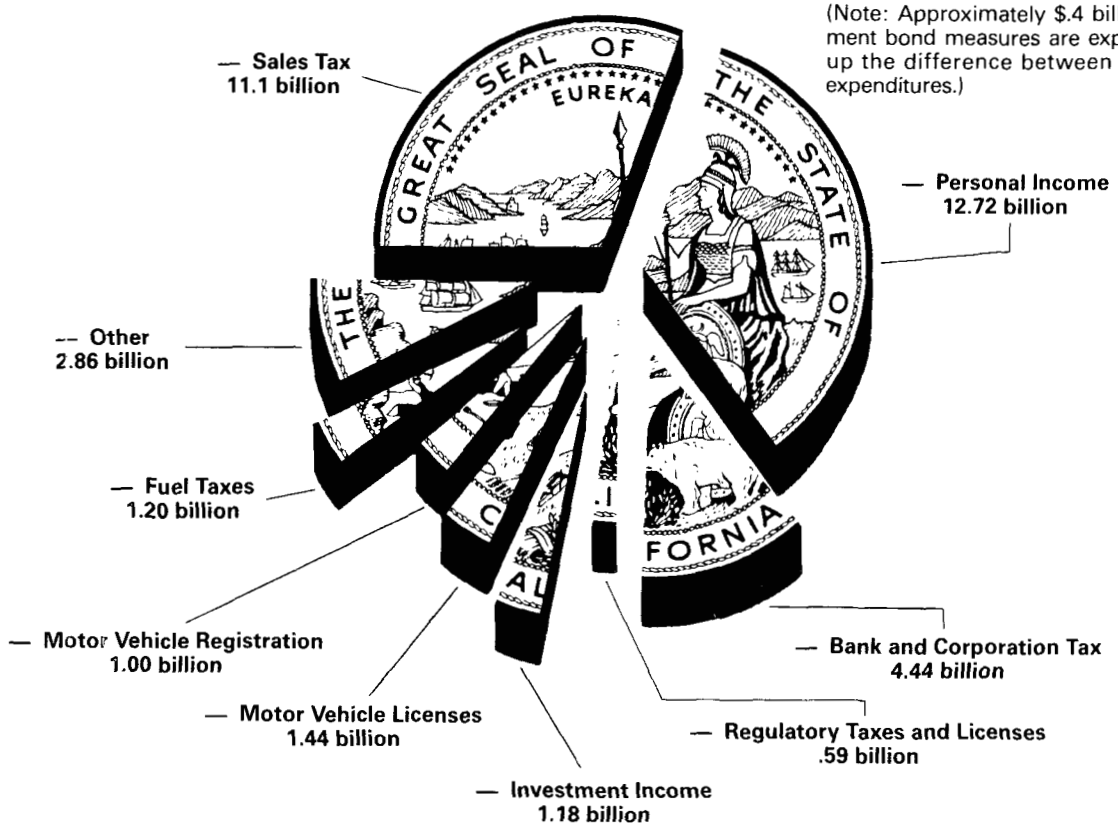
Revenues, 1986-87

Total Expected Income, general and special fund inclusive: $36.53 billion


(Note: Approximately $.4 billion in government bond measures are expected to make up the difference between revenues and expenditures.)
— Sales Tax 11.1 billion
— Personal Income 12.72 billion
— Other 2.86 billion
— Fuel Taxes 1.20 billion
— Motor Vehicle Registration 1.00 billion
— Motor Vehicle Licenses 1.44 billion
— Investment Income 1.18 billion
— Regulatory Taxes and Licenses .59 billion
— Bank and Corporation Tax 4.44 billion

opponents did not have the votes necessary to remove the amendments at the next session. Nor were Democratic leaders anxious to have Democratic Assembly members cast any vote that abortion foes could use as campaign fodder in November.

Assembly Speaker Willie Brown of San Francisco got rid of the amendments with some fast parliamentary maneuvering. The budget bill itself (AB2660) was allowed to sit idle while another bill (AB3217) was gutted and the entire budget — *sans* abortion amendments — written into it. Assembly Republicans were angry but decided not to hold up the budget over abortion. Thus the bill passed and was sent on to a six-member Assembly-Senate conference committee.

Conference committee

In the Senate, Senator H.L. Richardson, a Republican from Glendora, successfully added an amendment to the upper house's version prohibiting any state family-planning funds from being given to any organizations advocating abortions. Last year he had added the same amendment, and the conference committee removed it. But because of a clerical error it was left in the budget, where Deukmejian allowed it to remain. The 1st District Court of Appeal finally struck it down. This year's conference committee also removed the clause, but the final budget does contain what has become the Legislature's traditional Medi-Cal abortion language — limiting abortions to those to save the life of the mother, cases of incest and cases of genetic problems. The same language has been invalidated by the courts the last seven years, and another lawsuit was filed again this year.

The conference committee spent a relatively short seven days to resolve the few controversies. Deukmejian and the Senate had proposed no fee increases for University of California and California State University students; the Assembly followed a legislative analyst's recommendation and proposed a 10 percent increase. Speaker Brown sided with Deukmejian and the Senate, and the fee increase was rejected.

The committee chairman, Democratic Assemblyman John Vasconcellos of Santa Clara, presented the committee, at its final Sunday afternoon meeting, with a compromise package for the dozen remaining controversies. Language added by the Assembly to forbid the National Guard from sending troops to El Salvador, Nicaragua and Honduras was removed; Deukmejian was allowed to use $770,000 to open trade offices in Tokyo and London; the Department of Insurance was given $1 million for consumer-related services; $23 million was added for housing, $20 million for hospitals and $39 million for school desegregation programs.

The toxic-waste clean-up portion of the budget was handled differently. Deukmejian's January budget had contained no new toxic funding because he said he was waiting for the report of a task force he had named. That report was finished in May, and Deukmejian made his toxic proposal just when lawmakers were approving their budget versions. Lawmakers therefore appointed a special joint committee, consisting mainly of the two houses' toxic committees and some fiscal committee members and chaired by two Democrats — Senator Bill Greene of Los Angeles and Assemblyman Lloyd Connelly of Sacramento.

The special committee recommended a $76.5 million program ($50.5 million for the Department of Health Services and $26 million for toxic work at Water Resources Control Board that included an extra $7.7 million to have the board oversee local programs to clean up leaking underground tanks). The governor wanted to pay for about 20 percent of

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it with a bond measure on the November ballot, the rest coming from the Hazardous Waste Control Account and Hazardous Substance Account (the state's superfund), both of which raise money by imposing fees and taxes on those who dispose of toxic waste. Only the $7.7 million portion would come from the general fund.

The special committee unanimously rejected the bond proposal because a bill authorizing the bond measure did not yet exist. The committee recommended instead that the program be funded solely from the two accounts and the general fund, and the budget conference committee went along, adding the program to the final budget. The governor left it alone.

One problem remains, however, because of a current deficit in the Hazardous Waste Control Account. Thus, the program must be overhauled, fees raised and more toxic disposers brought into the fee base. A bill to do just that was heard in Assembly Ways and Means Committee in mid-August. If the bill doesn't pass, the program will be underfunded for the coming year, according to a source in the speaker's office. "The bill simply must pass," the source said.

After the final budget was approved by the conference committee, the Assembly passed it 57-20 and the Senate 36-3. Democrats in both houses contended the budget was essentially the same as that proposed by Deukmejian in January, while Republicans pointed to additions made by Democrats. Senate Minority Leader Jim Nielsen of Rohnert Park said Deukmejian would have "to some degree be responsible for us" and make some cuts.

Vasconcellos said most of the spending added by Democrats would save money in the long run by solving problems that would otherwise get worse. "We'd all like a billion-dollar reserve. But it doesn't make sense to guard an arbitrary amount under a leaking roof when we could spend a few bucks more to keep the roof from eventually falling on our heads," he said.

A dead deal

Since the Legislature's budget had a reserve of only $700 million, Deukmejian was expected to make $300 million or so in cuts. But one week after the Legislature passed the budget, the PERS deal relied upon by Deukmejian and lawmakers to boost the reserve fell apart. The 13-member Public Employees Retirement Board voted 7-6 to reduce the reserve from $300 million to $30 million, but the six dissenting votes were all representatives of state and local government employees and retirees.

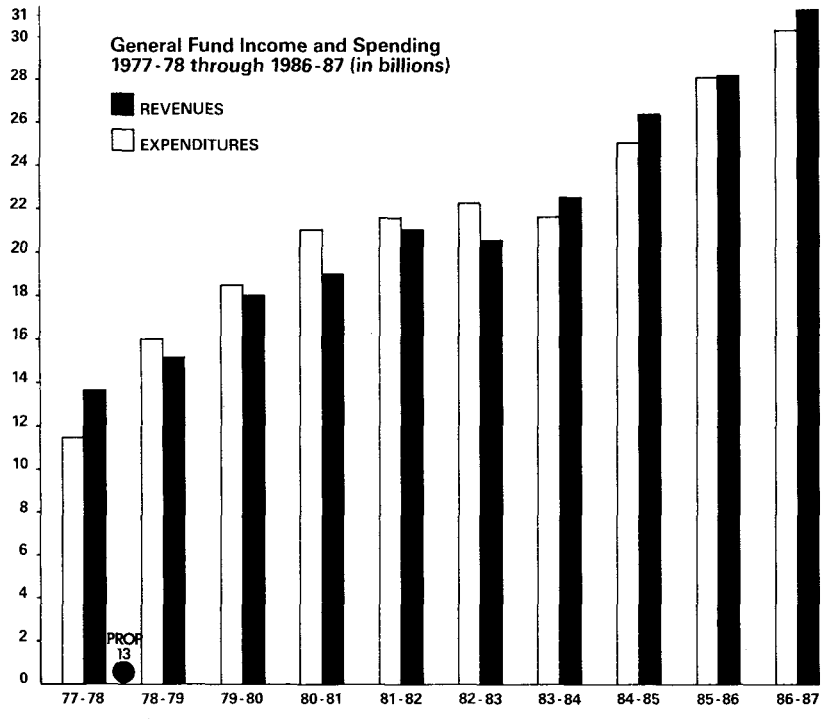
Two employee groups, the California State Employees Association and the California School Employees Association, threatened to sue if the Legislature passed a bill necessary to transfer the funds. Senate Democrats met on June 23rd and decided the plan "would establish an irresponsible fiscal posture for the state," said Senate President pro Tempore David Roberti, a Los Angeles Democrat. " . . . I would say the proposal is dead."

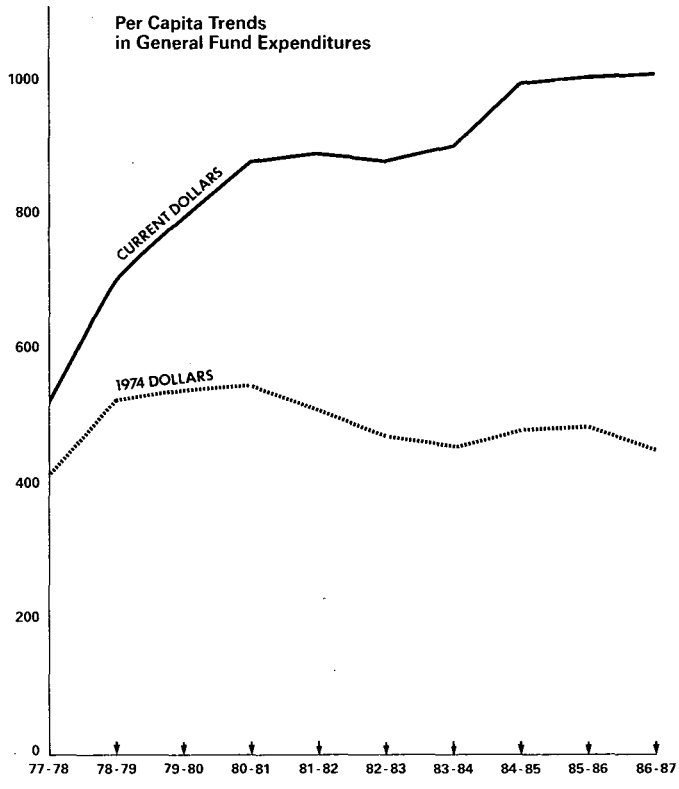
Two days later, Deukmejian signed the budget. His press release said his "fourth budget completes California's return to fiscal solvency and responsibility. It continues the governor's spending priorities including education, public safety, economic development and toxic waste cleanup and enforcement."

But determining exactly what he had done was not easy. His statement said he had vetoed $434 million and "also set aside $283 million for programs he supports in anticipation of the Legislature's passing legislation needed to complete their budget process" — namely, the PERS bill. When reporters added the two figures and wrote that Deukmejian had made over $700 million in vetoes, Finance Director Jesse Huff and other Deukmejian officials objected, saying the $283 million wasn't really vetoed, merely set aside — something of a rhetorical illusion, for no matter what term is applied to it, the money itself was excised from the budget. If the Legislature fails to pass the bill Deukmejian wants, the money will never be spent.

The $283 million the governor said he supports — but vetoed because of the PERS bill — included the $20 million for small-school-district transportation, $75 million for urban impact aid, $34 million for community colleges with declining enrollment and $21 million for community college counseling. It also included $35 million for mass-transit districts and $50 million for county health care for the working poor.

A spokesperson for the Department of Finance said the





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"set-asides" were chosen carefully and came from programs that would not suffer any immediate repercussions when the budget went into effect on July 1st. "This was not a hit list," the spokesperson said. "The Legislature has plenty of time to send down the appropriate legislation. Some of the affected money isn't even needed until the fall," a reference to urban-impact funds and community college programs that are not paid out until September.

The $717 million veto total included $271 million for public school and community college programs. Also vetoed were the $23 million for housing, $20 million for hospitals that care for poor people, $20 million of the $22 million added to combat acquired immune deficiency syndrome, $39 million for school desegregation programs, $11 million to increase rates paid to foster parents and the $7.7 million for underground tanks.

"Reversing the Legislature's intention to pay now and save later, the governor has vetoed funds that will result in ignorance, death and despair," said Vasconcellos in a burst of election-year hyperbole.

"The governor's budget is a hostage budget," said Senate leader Roberti. "He is holding $283 million in essential human services and educational programs hostage in an attempt to dip into the reserve of the Public Employees Retirement Fund."

California School Boards Association President Joe Duardo said the $112 million in cuts that are part of Deukmejian's "set-aside" will reduce the budgets of over 300 school districts. "The loss of these funds was a complete surprise and most districts will not be able to absorb the loss," he said.

David Evans, chair of the Small School Districts' Association, said the 450 small districts that unexpectedly lost $20 million in transportation funds were shocked. "The impact on some small districts is devastating, amounting to a reduction of $300 to $900 per pupil, equivalent to 5 to 14 percent of some districts' overall budget."

As in past years, Deukmejian also cut from the budget restrictive language added by Democratic lawmakers. He removed a requirement that the National Guard notify the Legislature before sending troops to foreign countries where there has been war. In one slash, he struck 141 pages in Control Section 9.00, containing requests that various state agencies do certain things and make reports to the Legislature. Included in that language was Vasconcellos' pet project (called the Human Corps) which would have asked UC and CSU to require students to help the underprivileged through tutoring or community work. Several governors have vetoed such language from budgets; lawmakers have always contended the governors did not have the power to cut anything but appropriations, but they have never gone to court to settle the issue.

"Policy does not belong in the budget, and it's time the majority party learned that," commented Nielsen, applauding Deukmejian's cuts of both spending and language.

Democratic legislators prepared lists of vetoes to try overriding. However, Assembly Republicans have always refused to vote for any Deukmejian overrides.

"I'm pessimistic about any prospects," Brown said in July. "There may be some that will come close," such as the small-school transportation, which affects many Republican districts.

The vetoed underground tank money was put into Deukmejian's $150 million toxic bond issue. But the Assembly rejected that in July when Republicans refused to agree to four other bond measures (for libraries, conservation, Mexican border sewage and school buses) that were part of a deal accepted by Assembly Democrats, both parties in the Senate and Deukmejian. Many legislators also objected to Deukmejian's plan that $70 million of the bond funds would be used for on-going salaries instead of the building projects that are the traditional use of bond funds.

ROSTRUM

Grand juries

I was suprised and disappointed that you allowed the publication of the shallow, uninformed article by Nancy Allen ("Have grand juries outlived their usefulness?," *CJ*, August 1986). No mention was made of the California Grand Jury Association (400 members) which is working hard to educate the citizenry about grand jury service and background, to screen potential grand jurors, to educate and assist judges in juror selection and operation, etc. We suggest Ms. Allen contact the undersigned and, after a discussion, perhaps submit a more realistic and factual article for publication.

WILLIAM E. ENGEL
President, California Grand Jurors Association
Riverside

I have just completed two years on the Fresno County Grand Jury and have a different opinion from that expressed by Nancy Allen (*CJ*, August 1986). All members were "in possession of their natural faculties." There was no "pomposity." We paid for every lunch. The two grand juries on which I served were composed of intelligent, responsible and industrious individuals of diverse ethnic and economic backgrounds who ranged in age from college student to retiree. An in-depth study was done before conclusions were drawn. Our recommendations were responded to by the person to whom they were directed. In most instances, they were accepted.

Finally, as to the comment "grand juries are more frequently concerned with sewage treatment and drainage problems than with criminal activity," I agree. And who else will check the bidding and building process in the taxpayers' interest?

ALLEAN N. BERG
Fresno

Congressional elections

In your July 1986 issue, you review the California congressional races that will appear on the November ballot. A similar issue of May 1986 focused on the primary races. With respect to the 19th Congressional District race, your July issue states, "Democrats hope Lagomarsino will retire from Congress . . . " and the May issue reports, "Democrats are hoping that this will be Lagomarsino's last term in Congress." I would like to set the record straight, that while the Democrats may hope, "Lagomarsino will retire," I have no plans to retire and have given no indication that would lead anyone to speculate about my retirement. I am a candidate for reelection in 1986 and do not have plans to make this my final campaign. I hope this will end any speculation in your fine publication regarding my political future.

ROBERT J. LAGOMARSINO
Member of Congress

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ROLL CALL

CORPORAL PUNISHMENT

AB 1617 (Farr) Would outlaw spanking and other forms of corporal punishment in public schools. Passed the Senate July 10th, 21-12.

SCHOOL BUS SAFETY BONDS

AB 2339 (Katz and Robinson) Would place a $100 million bond issue for a school bus safety program on the November 4th ballot. Passed the Senate July 3rd, 27-2.

EXTRACURRICULAR ACTIVITIES

AB 2613 (Willie Brown) Would require students in grades seven through 12 to maintain a 2.0 grade-point average in all classes in order to participate in sports and other extracurricular activities. Passed the Senate July 7th, 22-4; passed the Assembly July 10th, 69-6. Signed by the governor.

AIDS

AB 3667 (Agnos) Would block housing and job discrimination against AIDS victims by including them in anti-discrimination laws for the handicapped. Passed the Senate July 10th, 23-9. Vetoed by the governor.

CHARTER BUS SEAT BELTS

AB 4061 (Elder) Would require seat belts on all charter vans and buses in the state, except transit and school buses. Passed the Assembly July 3rd, 48-24.

SCHOOL BONDS

AB 4245 (Hughes) Would place an $800 million school bond for building and renovating elementary and secondary schools on the November 4th ballot. Passed the Assembly July 10th, 70-1; passed the Senate July 10th, 29-0. Signed by the governor.

POISON

SB 1611 (Torres) Would increase the maximum state prison sentence for poisoning any food, drink, drug or water supply to five years, from four years. Passed the Assembly July 8th, 71-1; passed the Senate July 10th, 34-0. Signed by the governor.

HIGHER EDUCATION BONDS

SB 2366 (Hart) Would place $400 million in higher education building outlay bonds on the November 4th ballot. Passed by the Assembly July 11th, 55-3. Signed by the governor.

AIDS AND REAL ESTATE

AB 2484 (Roberti) Would prohibit home purchasers from suing real estate agents if they do not tell buyers that a previous occupant had AIDS. Passed the Assembly July 8th, 70-2. Signed by the governor.

Source: LegiTech

SENATE

Democrats	AB1617	AB2339	AB2613	AB3667	AB4245	SB1611
Alquist (D)	Y	Y	*	Y	Y	Y
Ayala (D)	N	Y	Y	N	Y	Y
Boatwright (D)	*	Y	*	N	Y	Y
Carpenter (D)	*	Y	Y	Y	Y	Y
Deddeh (D)	*	Y	*	*	*	*
Dills (D)	Y	Y	Y	Y	Y	Y
Foran (D)	*	*	Y	Y	Y	Y
Garamendi (D)	Y	*	N	Y	*	*
Greene, B (D)	Y	Y	Y	Y	*	*
Greene, L (D)	Y	*	*	Y	Y	Y
Hart (D)	Y	Y	Y	Y	Y	Y
Keene (D)	Y	Y	Y	Y	Y	Y
Lockyer (D)	Y	Y	Y	*	Y	Y
Marks (D)	Y	Y	Y	Y	Y	Y
McCorquodale (D)	Y	Y	*	Y	Y	Y
Mello (D)	Y	Y	N	*	Y	Y
Montoya (D)	N	*	*	N	*	Y
Petris (D)	Y	Y	Y	Y	*	Y
Presley (D)	Y	Y	Y	N	Y	Y
Robbins (D)	Y	*	*	Y	*	Y
Roberti (D)	Y	Y	Y	Y	Y	Y
Rosenthal (D)	Y	Y	Y	Y	Y	Y
Stiern (D)	N	Y	Y	*	*	Y
Torres (D)	Y	Y	Y	Y	Y	Y
Vuich (D)	N	Y	Y	Y	Y	Y
Watson (D)	*	*	*	*	*	*

Republicans	AB1617	AB2339	AB2613	AB3667	AB4245	SB1611
Bergeson (R)	N	Y	N	Y	Y	Y
Beverly (R)	N	N	N	Y	Y	Y
Campbell (R)	*	*	*	*	*	*
Craven (R)	Y	Y	Y	Y	Y	Y
Davis (R)	Y	*	Y	Y	Y	Y
Doolittle (R)	N	N	*	N	Y	Y
Ellis (R)	Y	Y	Y	N	*	Y
Maddy (R)	N	Y	*	*	Y	Y
Morgan (R)	Y	*	Y	Y	Y	Y
Nielsen (R)	N	Y	*	N	Y	Y
Richardson (R)	N	*	*	*	*	*
Royce (R)	*	Y	Y	N	Y	Y
Russell (R)	N	*	Y	N	Y	Y
Seymour (R)	N	Y	*	Y	Y	Y

ASSEMBLY

Democrats	AB2613	AB4061	AB4245	SB1611	SB2366	SB2484
Agnos (D)	Y	Y	Y	Y	Y	Y
Areias (D)	Y	Y	Y	Y	Y	Y
Bane (D)	Y	Y	Y	Y	Y	Y
Bates (D)	Y	Y	Y	N	*	Y
Bronzan (D)	Y	Y	Y	Y	Y	Y
Brown, W (D)	Y	Y	Y	Y	Y	Y
Calderon (D)	Y	Y	Y	Y	Y	Y
Campbell (D)	Y	Y	Y	Y	Y	Y
Chacon (D)	Y	Y	Y	Y	Y	Y
Clute (D)	Y	Y	Y	Y	Y	Y
Condit (D)	Y	N	Y	Y	Y	Y
Connelly (D)	Y	Y	Y	Y	Y	Y
Cortese (D)	Y	Y	Y	Y	*	Y
Costa (D)	Y	Y	Y	Y	Y	Y
Davis (D)	Y	Y	*	*	*	*
Duffy (D)	*	Y	*	Y	*	*
Eaves (D)	Y	Y	Y	Y	Y	Y
Elder (D)	Y	Y	Y	Y	Y	Y
Farr (D)	Y	*	Y	Y	Y	Y
Floyd (D)	N	*	Y	Y	Y	Y
Hannigan (D)	Y	Y	Y	Y	Y	Y
Harris (D)	Y	Y	Y	Y	Y	Y
Hauser (D)	Y	Y	Y	Y	*	Y
Hayden (D)	Y	Y	Y	Y	*	Y
Hughes (D)	Y	Y	Y	*	*	Y
Isenberg (D)	Y	Y	Y	Y	Y	Y
Johnston (D)	Y	Y	Y	Y	*	Y
Katz (D)	Y	Y	Y	Y	Y	Y
Killea (D)	Y	Y	Y	Y	Y	Y
Klehs (D)	Y	*	Y	*	Y	*
Margolin (D)	Y	Y	Y	Y	Y	Y
McAlister (D)	Y	Y	Y	Y	Y	Y
Molina (D)	Y	Y	Y	Y	*	Y
Moore (D)	Y	*	Y	Y	Y	Y
O'Connell (D)	Y	Y	Y	Y	*	Y
Papan (D)	Y	Y	Y	Y	Y	Y
Peace (D)	Y	N	Y	Y	Y	Y
Polanco (D)	Y	Y	Y	Y	Y	Y
Robinson (D)	Y	Y	Y	Y	Y	Y
Roos (D)	Y	Y	Y	Y	Y	Y
Sher (D)	*	Y	Y	Y	*	Y
Tanner (D)	Y	Y	Y	Y	Y	Y
Tucker (D)	Y	Y	Y	Y	Y	Y
Vasconcellos (D)	Y	Y	*	*	*	Y
Vicencia (D)	Y	Y	Y	Y	Y	Y
Waters, M (D)	Y	Y	Y	Y	*	Y
Waters, N (D)	Y	Y	Y	Y	Y	Y

Republicans	AB2613	AB4061	AB4245	SB1611	SB2366	SB2484
Allen (R)	Y	N	Y	Y	Y	Y
Bader (R)	Y	N	Y	Y	Y	Y
Baker (R)	Y	N	Y	Y	Y	Y
Bradley (R)	Y	Y	Y	Y	Y	*
Brown, D (R)	N	*	*	Y	*	Y
Felando (R)	Y	Y	*	Y	*	N
Ferguson (R)	N	N	Y	Y	Y	Y
Filante (R)	Y	Y	Y	Y	Y	Y
Frazee (R)	Y	N	Y	Y	Y	Y
Frizzelle (R)	Y	Y	Y	Y	N	Y
Grisham (R)	*	*	Y	Y	*	Y
Herger (R)	Y	N	Y	Y	*	Y
Hill (R)	N	N	Y	*	Y	Y
Johnson (R)	*	N	Y	Y	Y	Y
Jones (R)	Y	N	Y	Y	Y	*
Kelley (R)	Y	N	Y	Y	Y	Y
Konnyu (R)	Y	N	Y	Y	*	Y
LaFollette (R)	Y	N	*	Y	*	Y
Lancaster (R)	Y	N	Y	Y	Y	Y
Leonard (R)	Y	Y	Y	Y	N	Y
Lewis (R)	N	N	*	Y	*	Y
McClintock (R)	Y	N	*	Y	Y	Y
Mojonnier (R)	Y	N	Y	Y	*	Y
Mountjoy (R)	*	*	*	*	*	*
Naylor (R)	Y	N	Y	*	Y	*
Nolan (R)	Y	Y	Y	*	Y	*
Rogers (R)	Y	N	Y	Y	Y	Y
Seastrand (R)	Y	N	Y	Y	Y	Y
Sebastiani (R)	Y	Y	N	Y	N	N
Statham (R)	N	*	Y	Y	Y	Y
Stirling, L (R)	Y	N	Y	Y	Y	Y
Wright (R)	Y	N	Y	Y	Y	Y
Wyman (R)	Y	N	Y	Y	Y	Y

*indicates absent or not voting

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A pair of hot races in — Bakersfield?

16th Senate; 33rd Assembly

By BRUCE SCHEIDT

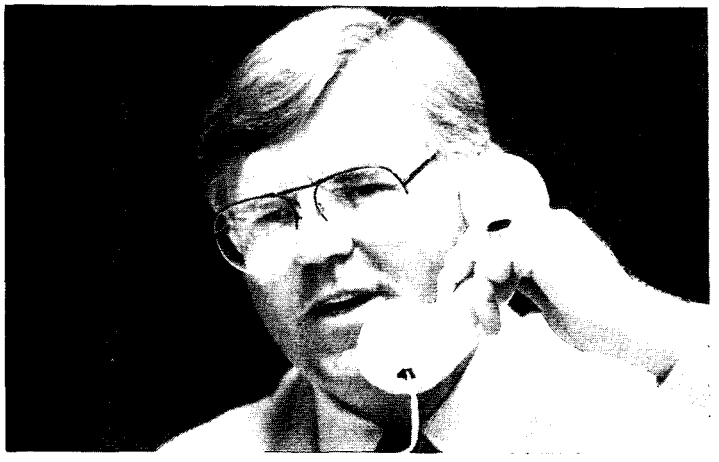
Bakersfield was the end of the road for many weary Dust Bowl migrants from the Great Plains in the 1930s. One of the richest agricultural regions of the world, the surrounding acres of Kern County were seen as the promised land for homeless travelers looking for better days ahead.

Kern County again is viewed as a promised land, this year by legislative leaders seeking opportunities for partisan gain. Senate dean Walter Stiern, a Bakersfield Democrat who has held office 28 years, focused the political spotlight on the area when he announced his retirement, effective at the end of the current legislative session. When Assemblyman Don Rogers, a four-term Bakersfield Republican, entered the race for Stiern's 16th Senate District seat, an opening was created in the 33rd Assembly District.

Harvey

Fallgatter

Rogers


Young

Photos: John Harte

Democrats predict they will keep Stiern's seat and that bungled attempts by Assembly Republicans to hand-pick Rogers' successor will cost the GOP Rogers' Assembly seat. Republicans insist conservative Kern County will not elect two Democratic legislators in the same year Governor George Deukmejian wins a landslide reelection. Whatever the outcome, both parties will spare little expense and energy waging war in Kern County this year.

The campaign for Bakersfield's Senate seat could be one of the most expensive legislative races this year. With Kern serving as its center of political gravity, the four-county district is 54 percent Democratic, 37 percent Republican. The sprawling boundaries represent a classic gerrymander intended to maintain Democratic control after Stiern's departure. The seat covers all of Kern and Kings counties, the Barstow area of San Bernardino County and, critical to Democratic chances, heavily black precincts of Pasadena and Altadena in Los Angeles County which have nothing in common with the rest of the largely rural district.

Despite the genius of Democratic mapmakers, the race probably favors the 58-year-old Rogers. The district has a conservative outlook, and Rogers is no stranger to winning in heavily Democratic districts. Republican leaders point out that President Reagan, Governor Deukmejian and U.S. Senator Pete Wilson all ran better in the 16th Senate District than in the rest of the state.

But Senate Democrats won't give up the seat without a fight. They think they have the ideal candidate in 47-year-old Jim Young of Arvin, chancellor of the Kern Community College District.

Young, a Texas native who speaks with a soft country drawl, can match Louisiana-born Rogers in talking the language of the district. A career educator with a doctorate from University of Southern California, Young can be seen in the

Bruce Scheidt is a Capitol correspondent for the Bakersfield Californian.

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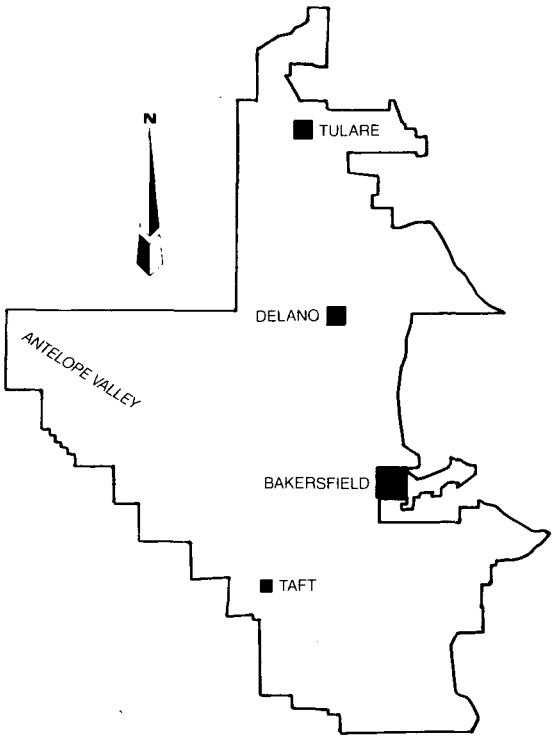
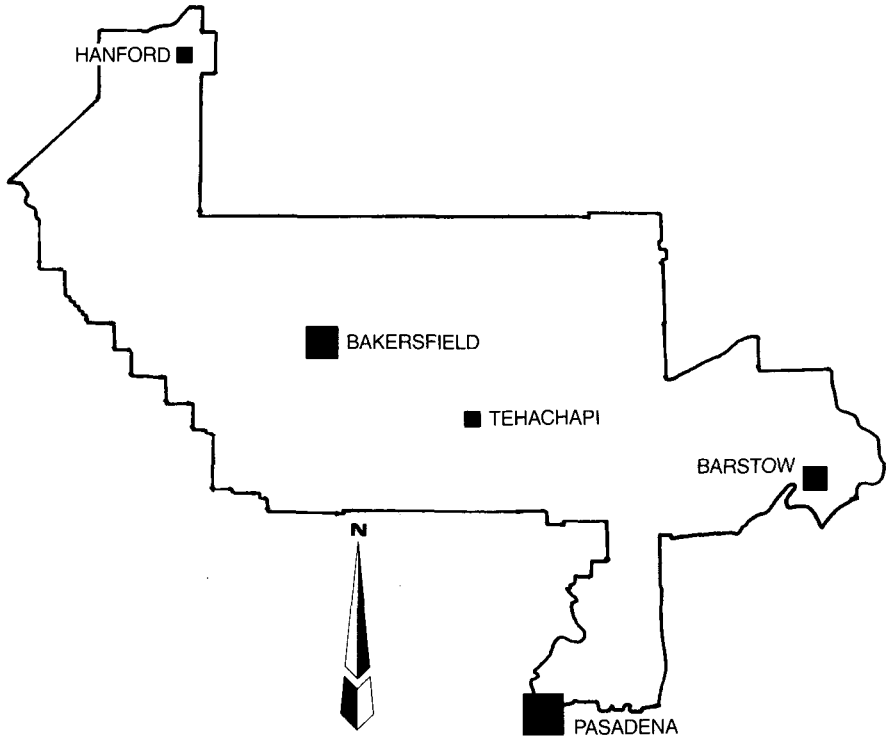


33rd ASSEMBLY DISTRICT



16th SENATE DISTRICT

Bakersfield area — California's "Nashville West" — playing guitar in a country band called "Egg Suckin' Dogs."

Young was supposed to have a tough primary against Bakersfield neurosurgeon George Ablin, a long-time party fundraiser who pumped $140,000 of his family funds into the campaign. But Young won easily with 71 percent of the vote. Rogers, meanwhile, won 84 percent against a candidate who was even less visible than his paltry $1000 campaign would indicate.

Senate President pro Tempore David Roberti, a Los Angeles Democrat, was so excited about the primary results that he proclaimed Young the favorite in November — "no ifs, ands or buts about it." He backed this confidence by dumping $150,000 into Young's campaign immediately after the June 3rd primary.

Young, a career educator, says public education will be the key issue in the race. He has criticized Rogers' voting record, particularly the assemblyman's abstention on SB813 in 1983, the most important school-reform bill in the past decade, and his vote against a class-reduction bill last year.

"If he truly believes in education, he would have been there supporting them," Young says. "That tells me he is not supportive of public education."

Rogers says Young's accusations are "completely wrong," adding, "I've been very supportive of public education." Rogers explains that he supported the reforms in SB813 but could not vote for the bill because it was partially financed by tax increases. The assemblyman also says he has carried finance bills for Kern school districts and bucked the Deukmejian administration by voting to override a 1984 veto of an $850 million school-construction bond.

"My personal philosophy and voting record fit the district very well," Rogers says.

Young also accuses Rogers of not doing anything of major importance in the Legislature outside of sponsoring a voter-approved initiative in 1982 that eliminated the state's inheritance tax. Rogers, a hardline fiscal conservative, acknowledges that many of his bills to reduce government regulation of businesses have been killed in the Democrat-controlled Legislature. "That's all the more reason to elect more Republicans, so we can get good legislation through," Rogers says.

Assembly race

Hard feelings among Republicans, meanwhile, make the Assembly race too close to call, even though the 33rd District has been held by Republicans for 18 of the last 20 years. Republican leader Nolan as far back as December was praising the chances of Kern County supervisor Trice Harvey. But in a bizarre turn of events, Nolan switched his allegiance to challenger Anna Allen two weeks before the primary election, publicly blasted Harvey as being on the wrong side on tax and toxic-waste issues, and declared he was "convinced Harvey could not possibly win this race in November."

Nolan exhibited some political angst after Harvey crawled out of the rubble with a 297-vote victory and with the nomination. "All of us are fallible," Nolan said. "It's my job to get Trice Harvey up here, and he will be up here. I'll just have to work all the harder."

Harvey, 50, will be matched against Democrat Tom Fallgatter, a 40-year-old Bakersfield attorney who has a flair for the dramatic. Fallgatter once displayed a dead kit fox at a Bakersfield Planning Commission meeting to spearhead opposition to a major Kern River development, and earlier this year led a citizens' drive against toxic-waste disposal sites in Kern.

The Assembly district covers the San Joaquin Valley portion of Kern, including most of Bakersfield and the city of Tulare in neighboring Tulare County. Although he won his primary with a less-than-reassuring 64 percent of the vote against token opposition, Fallgatter is given a solid shot in November because of Nolan's erratic behavior and his own conservative credentials that may appeal to moderate Republicans.

A Kern native, the Democrat has come out against additional gun-control laws, further legal protections for gays,

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public funding for abortions and the retention of Chief Justice Rose Bird. It also helps Fallgatter that he comes from a family of well-known Republicans: his father, Cal, and brother John are former members of the Kern Republican Central Committee, while sister-in-law Martha Fallgatter is the current county GOP chairwoman. Though his father has endorsed his candidacy, brother John is supporting Harvey and sister-in-law Martha is also working hard to defeat him.

"It makes the race slightly more interesting on a personal level, but it really is peripheral," Fallgatter said. "We are able to joke about it."

Fallgatter says no one issue is as important as the different style of representation he and Harvey would bring to Sacramento. Harvey, a self-identified "redneck," has an embarrassing tendency toward flash anger and broken syntax, while Fallgatter is far more articulate. "In the public's mind, Trice Harvey is not the kind of person they want to represent them in Sacramento," Fallgatter asserts.

But Harvey is not without his political strengths. Roughhewn appearances aside, he is a capable and shrewd politician.

Born in Paragould, Arkansas, Harvey was a three-sport star athlete at Taft High School and Taft Junior College in Kern County. He holds a bachelor's degree in life sciences from California State University, Fresno, and worked 10 years as a Kern County health inspector and 10 years as a pharmaceutical salesman. He pulled off a major upset in 1976 when he defeated former Supervisor Vance Webb who had held office 24 years.

"My best achievement is that I've represented the people fairly. I've done it so fairly they've reelected me twice, and the last time nobody ran against me," Harvey says.

Money

Campaign financing could be a key issue in the Senate and Assembly races. Rogers and Harvey hope to tie the noose of liberalism around the necks of their opponents by pointing out where the Democrats are getting their campaign money. Young and Fallgatter have gotten the bulk of the campaign financing from liberal Democrats in Sacramento, but neither seems overly worried about the political consequences.

"Everybody says you can't be independent when you accept that money," Young says, "but they don't send strings down with it. They want me to get elected. They know I'm not with them on some issues, and the district knows where I am on the issues."

Young has portrayed himself as a conservative Democrat in the Stiern mold. He opposes the retention of Chief Justice Bird, and supported passage of Proposition 51 in June, the so-called deep-pocket reform initiative that was approved by the voters. Rogers is not persuaded.

"He has cast his lot with the ultra-liberals in Sacramento," Rogers says. "Do we want the district to be represented by an ultra-liberal or a conservative?"

Harvey's guilt-by-association strategy poses personal risks. Harvey claims Fallgatter is a captive of liberal Assembly Speaker Willie Brown's campaign money; yet Harvey is beginning to have his own difficulties explaining his relationship with GOP leader Nolan. In the primary Harvey made effective use of Nolan as a political foil, telling voters Nolan turned against him because he could not be controlled. "I'm independent. I proved that in the primary," Harvey says.

But the Nolan-controlled Assembly Republican Political Action Committee (ARPAC) paid off Harvey's $52,000 primary campaign debt — without his approval, Harvey claims. Harvey insists he will repay the debt to his campaign vendors, even though they say a debt no longer exists.

One moment Harvey declares, "I'm not taking any money from Pat Nolan." The next minute he admits he will have to take ARPAC money in the fall to finance his campaign. "That's good Republican money," Harvey says. "That's not Pat Nolan's money."

Fallgatter is left chuckling. He says Harvey's confusing actions have erased Willie Brown as an issue.

"My feeling is, Willie Brown is not that big a factor," Fallgatter says.

BALLOT FRONT

A roundup of statewide initiative proposals. All statutes require 393,835 valid signatures; constitutional amendments require 629,136. In parentheses is the deadline for sponsors to submit signatures to county clerks, and the issue of California Journal *that contains a full explanation of each measure.*

Continuing in circulation:

ABORTION — an initiative constitutional amendment, sponsored by Susan Sassone of the Santa Ana-based group "Choose Life." (August 18th, *CJ*, May 1986)

GAMBLING — an initiative constitutional amendment, sponsored by Gerald Ronnebeck of Adelanto. (August 18th, *CJ*, May 1986)

Qualified for November ballot:

(The October *California Journal* will contain a ballot booklet, with complete run-downs on all measures to appear before voters in the November 1986 election.)

Failed to qualify:

CAMPAIGN SPENDING — an initiative statute, sponsored by Walter Gerken of Corona del Mar, that would have limited campaign spending and contributions and set up partial state funding for candidates for state office. Under provisions of this initiative, an individual could have contributed no more than $1000 per election to any one candidate and no more than $25,000 annually to all candidates. Organizations could have contributed no more than $2500 per candidate and a political action committee no more than $5000 per candidate. In addition, non-election year fund raising would have been prohibited. Finally, the measure would have established a Campaign Reform Fund to provide matching funds to qualified candidates.

CANNABIS CONTROL ACT — an initiative statute, sponsored by Barton G. Gilbert of Burbank, that would have declared marijuana to be "an intoxicant alongside dry wine" and regulated it accordingly. It would have repealed the current statutory listing of marijuana as a controlled, illegal hallucinogen.

STAR WARS — an initiative statute, sponosred by William Flannery of North Hollywood, that would have urged the federal government to conclude a treaty with the Soviet Union to ban weapons in space.

BEVERAGE CONTAINERS — an initiative statute, sponsored by Bill Shireman of Sacramento, that would have required those who make, distribute or sell beverages to offer refillable containers and bottles for sale. Containers would be redeemed by dealers or redemption centers.

OPEN PRIMARY ELECTIONS — an initiative statute, sponsored by Cynthia Trania and Joseph Gattuso from the San Francisco Bay area, that would have allowed all registered voters to cast ballots in primary elections.

Source: Secretary of State March Fong Eu

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Perspective from
WASHINGTON
By Leo Rennert

Oil, nature and politics

The marathon fight between the Reagan administration and California's congressional delegation over off-shore oil drilling — after seeping into this fall's campaigns — threatens to spread to the 1988 presidential contests. Because neither side has the power to deliver a knockout punch, the future of California's coastline now looms as a prime issue for presidential hopefuls vying for convention delegates and the state's 47 electoral votes. Before too long, the Class of '88 will be tested on whether and where oil rigs should be permitted in federal waters off California. In the meantime California's current races for governor and the U.S. Senate already have been shaped by this politically sticky issue.

FOR NEARLY SIX YEARS, the Interior Department has made every effort to open vast new areas off the California coast to oil production. First, under James Watt's flamboyant leadership, the push was on to lease as many off-shore tracts as the market would bear — and more. Under Donald Hodel's more low-key approach, the administration put on a more reasonable face, but essentially stuck to its pro-development policy. With each push for sinking wells, there came a counter-push from most members of the state delegation — Democrats and Republicans — who voiced alarm about the impact on scenic stretches of the coast, on beaches for recreation-hungry urbanites, on fisheries and on navigation. In sum, the fight has been between two essential parts of California's lifestyle — a drive for new commercial frontiers pitted against a desire to protect some of nature's greatest gems.

Watt's devil-may-care one-sidedness so infuriated Congress that for three years it imposed a moratorium on drilling off Central and Northern California. Hodel, by using more moderate tactics, changed the equation and began to make some headway in persuading Congress to unshackle the department. With Watt out of the picture, Congress no longer had an interior secretary to kick around. Lawmakers began tiring of their California colleagues' annual plea for still another reprieve. Members from other regions tend to think of California as a problem-free Shangri-La and bristle at the notion that it rates special treatment on Capitol Hill. Last year, Congress lifted the drilling moratorium.

But Hodel, like Watt, overplayed his card. Congress lowered its guard after getting some signs that the administration and the delegation might be able to cut a deal. In fact, Hodel and key California lawmakers did hammer out an agreement to permit carefully limited off-shore development in exchange for long-term protection of some of the most sensitive areas of the coast. But the oil industry wanted much more, and Hodel backed down. Helping to torpedo the deal was Governor George Deukmejian whose 1985 role angered Republican Senator Pete Wilson and other members of the delegation. The fight was on again — with the 1986 election year as the next round.

With Hodel no longer amenable to a realistic compromise, the delegation began laying the groundwork for another congressional moratorium. This time, the signals from Sacramento were a bit more positive. As the gubernatorial contest opened, Democrat Tom Bradley began pounding on Deukmejian's environmental record, including protection of the coastline. While insisting that he hadn't changed his basic policy of permitting oil development with adequate environmental protection, Deukmejian adopted a more critical position about Interior's drilling plans. Hodel, after planning a Southern California lease sale for early 1988, agreed to a one-year delay and credited Deukmejian with helping to engineer the change.

On Capitol Hill, there were immediate suspicions that Hodel was engaged in divide-and-conquer tactics by providing relief to Southern California at the expense of Northern California. Hodel's move also was seen as a partisan ploy to defuse the off-shore drilling issue in the Senate and gubernatorial contests. Otherwise, Bradley and Democratic Senator Alan Cranston could have a field day linking their Republican opponents to the administration's drilling agenda. Politically, the south was important because that's where most California voters live. And, lo and behold, it also happens that coastal districts in the south are represented by a number of Republican congressmen while Democrats represent the northern coastline.

STATEWIDE SOLIDARITY IN THE DELEGATION, however, did not crumble. If oil reserves off Southern California could be locked up for another year, Northern California deserved the same treatment. After lengthy backstage negotiations, the Democratic-controlled House went along with this argument and came up with a reprieve to delay off-shore leasing along California's coast until after the next president is inaugurated. In the meantime Hodel could proceed with pre-leasing activities, including a call for bids in early January 1989. Under the finely calibrated compromise, the Reagan administration could take all necessary steps to prepare for a new round of drilling off California — north and south — but the final decision would be reserved for President Reagan's successor. In the meantime ample room was left for further negotiations between Hodel and the delegation to select off-shore tracts appropriate for development. With the timetable laid down by the House, the stage also is set for environmentally-minded Californians to exact maximum concessions from the growing cast of 1988 presidential contenders. There's apt to be a political bidding war before the industry has a chance to submit drilling bids.

The legislative battle continues. "It is the same old moratorium against leasing except it is under a new label," said the American Petroleum Institute. In the GOP-controlled Senate, the first move was against protection for California. But state lawmakers believe the tide is with them and Congress is likely to adopt the House view before next month's adjournment. If so, Watt and Hodel — by stubbornly overreaching — will have made it possible for environmentalists to keep the oil industry out of the biggest part of California's coastline for the entire eight years of the Reagan administration. Perhaps even longer.

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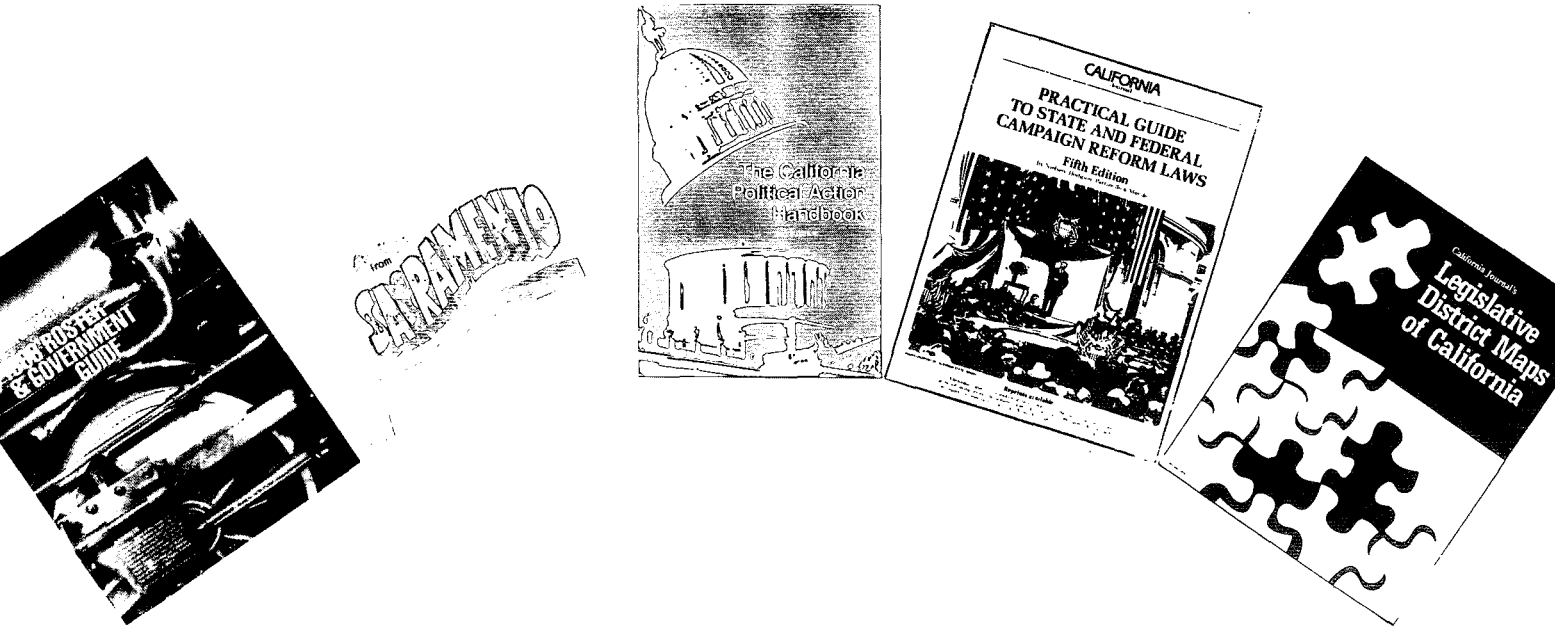
It's a Full House!

Five inexpensive booklets from **California Journal** can turn any group into a political powerhouse. These guides tell you who to contact (Legislative District Maps), where to find them (Roster), how to get what you want (Action Handbook) how to contribute to campaigns without getting in trouble (Practical Campaign Guide),and where to celebrate when you're done (Visitors Guide). In quantities over 100 the five booklets **together** cost only $3.39 including tax.



Roster & Government Guide, 1986. contains the names, titles, addresses and telephone numbers of all the key players in California government; a list of state agencies, a legislative-process chart and plenty of other useful information. Price for the 16-page pamphlet; 100 or more copies, 33 cents each; 50-99 copies, 48 cents each; 2-49 copies, 85 cents each; single copy, $1.50.

Practical Guide to State and Federal Campaign Reform Laws *by Nielsen, Hodgson, Parrinello & Mueller.* This 16-page booklet, prepared in an easy-to-understand question-and-answer format, explains the myriad new campaign reform laws. The 1986 edition reflects the most recent changes in the law. Copies are: 100 or more, 54 cents each; 50-99 copies, 74 cents each; 2-49 copies, 95 cents each; single copy, $1.95.

Legislative District Maps of California. Newly updated description of every Assembly, state Senate and Congressional district in California, including registration data and 10 maps. Also includes a brief history of reapportionment for the decade of the '80s. Price for this 8½" x 11", 16-page booklet: $1.50 ea.; 2-9 copies, 95 cents ea.; 10-49 copies, 75 cents ea.; 50 or more copies, 50 cents ea.

The California Political Action Handbook, Second Edition. This guide to the political game in Sacramento answers these questions: How can an organization or an individual win in Sacramento? What tactics should be applied when legislative emergencies arise? How can the bureaucracy be penetrated? How can elections be won? Price for the 32-page 5½ x 8½ handbook; $2.50 ea. or 2-10 copies, $1.95 ea.; 11-49 copies, $1.50 ea.; 50-99 copies, 95 cents ea.; 100 or more, 80 cents ea.

1986 Sacramento Political Visitors Guide. A 20-page, four-color guide for persons visiting the capital for the purpose of making their voices heard in the political process. Contains maps of the downtown area and the Capitol building, information on the legislative process, where to wine and dine, places to stay and how to get around, 8½ x 11, 1985. $1.95 ea.; 2-49 copies, 99 cents ea.; 50-99 copies, 74 cents ea.; 100 or more, 49 cents ea.

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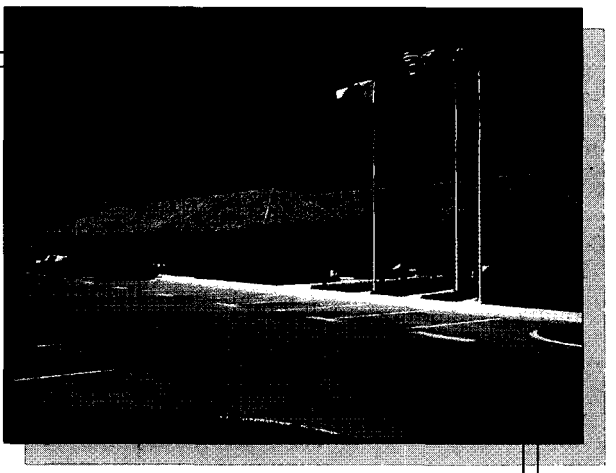

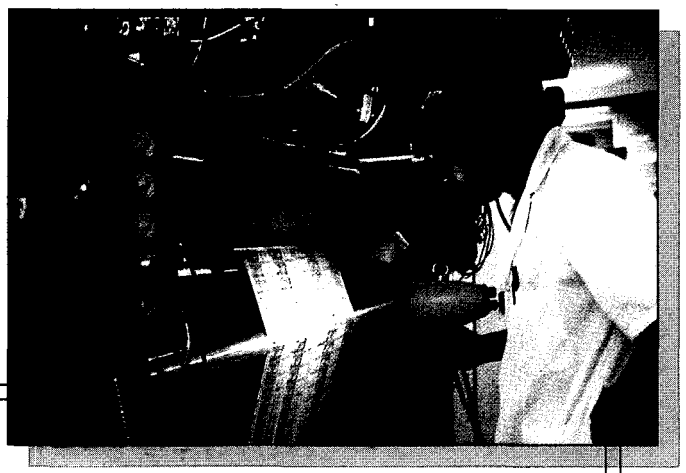

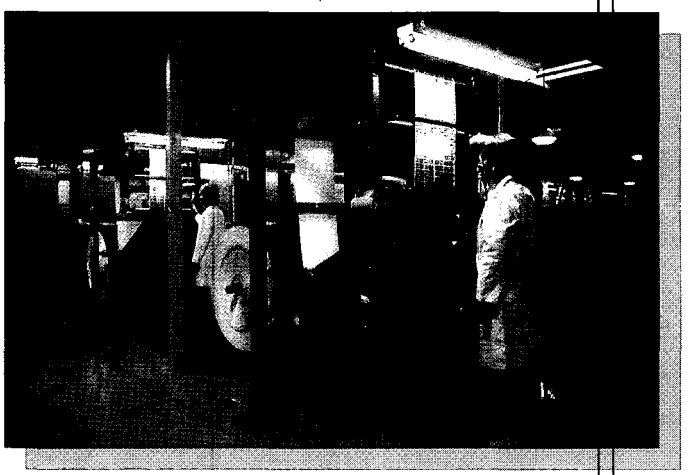

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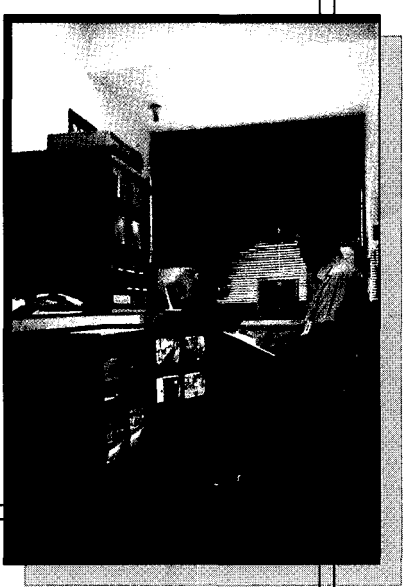

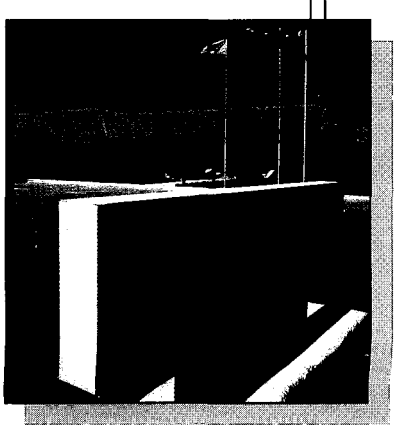

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